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Report of the Committee on the Elimination of Racial Discrimination

Seventieth session
(19 February-9 March 2007)
Seventy-first session
(30 July-17 August 2007)

General Assembly
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Sixty-second Session
Supplement No. 18 (A/62/18)

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Letter of transmittal

17 August 2007

Sir,

It is with pleasure that I transmit the annual report of the Committee on the Elimination of Racial Discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination, which has now been ratified by 173 States, constitutes the normative basis upon which international efforts to eliminate racial discrimination should be built.

During the past year, the Committee continued with a significant workload in terms of the examination of States parties' reports (discussed in chapter III) in addition to other related activities. The Committee also examined the situation of several States parties under its early warning and urgent procedures (see chapter II). In this connection, the Committee adopted new guidelines for the early warning and urgent action procedure (see annex III). Furthermore, the Committee examined several States parties under its follow-up procedure (see chapter IV as well as annex IV for a table reviewing the submission of reports on follow-up by States parties).

In order to continue its consideration of subjects of general interest, the Committee decided to hold a thematic discussion on the issue of double discrimination on the grounds of race and religion at its seventy-third session (28 July-16 August 2008), and also decided to commence drafting a new general recommendation on special measures.

As important as the Committee's contributions have been to date, there is obviously some room for improvement. At present, only 51 States parties (see annex I) have made the optional declaration recognizing the Committee's competence to receive communications under article 14 of the Convention and, as a consequence, the individual communications procedure is underutilized, as indeed is also the inter-State complaints procedure.

Furthermore, only 43 States parties have so far ratified the amendments to article 8 of the Convention adopted at the Fourteenth Meeting of States Parties (see annex I), despite repeated calls from the General Assembly to do so. These amendments provide, inter alia, for the financing of the Committee from the regular budget of the United Nations. The Committee appeals to

His Excellency Mr. Ban Ki-moon
Secretary-General of the United Nations
New York

States parties that have not yet done so to consider making the declaration under article 14 and ratifying the amendments to article 8 of the Convention.

The Committee remains committed to a continual process of reflection on and improvement of its working methods, with the aim of maximizing its effectiveness. In this connection, the Committee held a meeting with States parties during its seventy-first session (see chapter XII) and adopted revised reporting guidelines in order to take into consideration the guidelines on a common core document and treaty specific documents, as contained in the harmonized guidelines on reporting under the international human rights treaties approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1), as well as to take into account the evolving practice and interpretation of the Convention by the Committee, as reflected in its general recommendations, opinions on individual communications, decisions and concluding observations.

The Committee also adopted at its seventieth session a study including proposals on ways to improve the effectiveness of its procedures (A/HRC/4/WG.3/7) which was submitted for consideration by the fifth session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, as requested by the working group.

At the present time, perhaps more than ever, there is a pressing need for the United Nations human rights bodies to ensure that their activities contribute to the harmonious and equitable coexistence of peoples and nations. In this sense, I wish to assure you once again, on behalf of all the members of the Committee, of our determination to continue working for the promotion of the implementation of the Convention and to support all activities that contribute to combating racism, racial discrimination and xenophobia throughout the world.

I have no doubt that the dedication and professionalism of the members of the Committee, as well as the pluralistic and multidisciplinary nature of their contributions, will ensure that the work of the Committee contributes significantly to the implementation of both the Convention and the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in the years ahead.

Please accept, Sir, the assurances of my highest consideration.

(*Signed*): Régis **de Gouttes**
Chairperson
Committee on the Elimination of Racial Discrimination

I. ORGANIZATIONAL AND RELATED MATTERS

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination

1. As at 17 August 2007, the closing date of the seventieth session of the Committee on the Elimination of Racial Discrimination, there were 173 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in resolution 2106A (XX) of 21 December 1965 and opened for signature and ratification in New York on 7 March 1966. The Convention entered into force on 4 January 1969 in accordance with the provisions of its article 19.

2. By the closing date of the seventieth session, 51 of the 173 parties to the Convention had made the declaration envisaged in article 14, paragraph 1, of the Convention. Article 14 of the Convention entered into force on 3 December 1982, following the deposit with the Secretary-General of the tenth declaration recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation by the State party concerned of any of the rights set forth in the Convention. Lists of States parties to the Convention and of those which have made the declaration under article 14 are contained in annex I to the present report, as is a list of the 43 States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties, as at 17 August 2007.

B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination held two regular sessions in 2007. The seventieth (1787th to 1817th meetings) and seventy-first (1818th to 1845th meetings) sessions were held at the United Nations Office at Geneva from 19 February to 9 March 2007 and from 30 July to 17 August, respectively.

4. The agendas of the seventieth and seventy-first sessions, as adopted by the Committee, are reproduced in annex II.

C. Membership and attendance

5. The list of members of the Committee for 2007-2008 is as follows:

Name of member	Country of nationality	Term expires 19 January
Mr. Mahmoud ABOUL-NASR	Egypt	2010
Mr. Nourredine AMIR	Algeria	2010
Mr. Alexei S. AVTONOMOV	Russian Federation	2008
Mr. José Francisco CALI TZAY	Guatemala	2008
Ms. Fatimata-Binta Victoire DAH	Burkina Faso	2008
Mr. Kokou Mawuena Ika Kana (Dieudonné) EWOMSAN	Togo	2010

Name of member	Country of nationality	Term expires 19 January
Mr. Régis de GOUTTES	France	2010
Ms. Patricia Nozipho JANUARY-BARDILL	South Africa	2008
Mr. Anwar KEMAL	Pakistan	2010
Mr. Morten KJAERUM	Denmark	2010
Mr. José A. LINDGREN ALVES	Brazil	2010
Mr. Raghavan Vasudevan PILLAI	India	2008
Mr. Pierre-Richard PROSPER	United States of America	2008
Mr. Linos Alexander SICILIANOS	Greece	2010
Mr. TANG Chengyuan	China	2008
Mr. Patrick THORNBERRY	United Kingdom of Great Britain and Northern Ireland	2010
Mr. Luis VALENCIA RODRÍGUEZ	Ecuador	2008
Mr. Mario Jorge YUTZIS	Argentina	2008

6. All members of the Committee attended the seventieth and seventy-first sessions, with the exception of Mr. Prosper, who was unable to attend the seventy-first session.

D. Officers of the Committee

7. At its 1730th meeting (sixty-eighth session), on 20 February 2006, the Committee elected the Chairperson, Vice-Chairpersons and Rapporteur as listed below in accordance with article 10, paragraph 2, of the Convention, for the terms indicated in brackets.

Chairperson:	Mr. Régis de GOUTTES (2006-2008)
Vice-Chairpersons:	Ms. Fatimata-Binta Victoire DAH (2006-2008) Mr. Raghavan Vasudevan PILLAI (2006-2008) Mr. Mario YUTZIS (2006-2008)
Rapporteur:	Mr. Patrick THORNBERRY (2006-2008)

E. Cooperation with the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization, the independent expert on minority issues and the Special Rapporteur on freedom of religion or belief

8. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),[1] both organizations were invited to attend the sessions of the Committee. Consistent with the Committee's recent practice, the Office of the United Nations High Commissioner for Refugees (UNHCR) was also invited to attend.

9. Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations submitted to the International Labour Conference were made available to the members of the Committee on the Elimination of Racial Discrimination, in accordance with arrangements for cooperation between the two committees. The Committee took note with appreciation of the reports of the Committee of Experts, in particular of those sections which dealt with the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other information in the reports relevant to its activities.

10. UNHCR submits comments to the members of the Committee on all States parties whose reports are being examined when UNHCR is active in the country concerned. These comments make reference to the human rights of refugees, asylum-seekers, returnees (former refugees), stateless persons and other categories of persons of concern to UNHCR. UNHCR representatives attend the sessions of the Committee and report back on any issues of concern raised by Committee members. At the country level, although there is no systematic follow-up to the implementation of the Committee's concluding observations and recommendations in the 130 UNHCR field operations, these are regularly included in activities designed to mainstream human rights in their programmes.

11. Ms. Gay McDougall, independent expert on minority issues, held a dialogue in a closed meeting with the Committee at its 1812th meeting (seventieth session), on 7 March 2007.

12. At its 1818th meeting (seventy-first session), the Committee held a brief dialogue with a representative of the ILO, Mr. Martin Oelz, a representative of UNHCR, Ms. Karolina Lindholm Billing, and the Coordinator of the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Mr. Gianni Magazzeni.

13. The Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir, held a dialogue with the Committee in a public meeting at its 1826th meeting (seventy-first session), on 6 August 2007.

F. Other matters

14. Mr. Bacre Ndiaye, Chief of the Human Rights Procedures Division of OHCHR, addressed the Committee at its 1787th meeting (seventieth session), on 19 February 2007.

15. Ms. Kyung-wha Kang, Deputy High Commissioner for Human Rights, addressed the Committee at its 1818th meeting (seventy-first session), on 30 July 2007.

G. Adoption of the report

16. At its 1845th meeting (seventy-first session), on 17 August 2007, the Committee adopted its annual report to the General Assembly.

Note

[1] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18* (A/8718), chap. IX, sect. B.

II. PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES

17. The Committee, at its 979th meeting, on 17 March 1993, adopted a working paper to guide it in its future work concerning possible measures to prevent, as well as more effectively respond to, violations of the Convention.[1] The Committee noted in its working paper that efforts to prevent serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination would include early warning measures and urgent procedures.

18. At its 1659th meeting (sixty-fifth session), the Committee established a working group on early warning and urgent action procedures. This working group includes the following five members of the Committee:

Coordinator:	Ms. Patricia Nozipho January-Bardill
Members:	Mr. Alexei S. Avtonomov
	Mr. José Francisco Cali Tzay
	Mr. Alexander Linos Sicilianos
	Mr. Agha Shahi

19. At its seventieth session, the Committee decided that Mr. Pillai would replace the late Mr. Shahi as a member of the working group.

20. At its seventy-first session, the Committee adopted new guidelines for the early warning and urgent action procedure which replace its 1993 working paper on the prevention of racial discrimination, including early warning and urgent procedures (see annex III for the text of the guidelines).

21. At its seventieth session, the Committee requested the Chairperson to send a letter to the Government of Belize, informing it that the Committee had considered on a preliminary basis under its early warning and urgent action procedures information regarding the situation of the Maya people and their land claims. In view of the fact that the problems faced by the Maya people seemed to call for immediate attention, and referring to its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee requested the State party to submit replies to a series of questions as a matter of urgency and no later than 1 July 2007.

22. At its seventy-first session, the Committee requested the Chairperson to thank the Government of Belize for its reply received on 14 August 2007, while reiterating its wish to receive a detailed response to the questions raised in its letter of 9 March 2007, no later than 31 December 2007.

23. At its seventieth session, the Committee requested the Chairperson to send a letter to the Government of Peru following receipt of information on the situation of the Aymara people located on the grasslands of the Altiplano. Following the absence of a reply to its letter of 18 August 2006, the Committee requested a detailed response to issues raised in this letter as well as to additional questions, no later than 1 July 2007. The Committee also invited the State party to send a delegation to attend its seventy-first session in order to open a frank and constructive dialogue on these matters.

24. At its seventy-first session, after consideration of replies by the Government of Peru to some of the questions raised by the Committee, it was decided that the Chairperson

should send a letter to the State party informing it that following the belated receipt of information, the Committee would consider the issue further at its seventy-second session. The Committee also decided to request receipt of all information yet to be provided by 30 November 2007. The Committee further reminded the State party that its fifteenth to nineteenth periodic reports were overdue, and requested it to submit these reports in a single document by 30 June 2008.

25. At its seventieth session, the Committee requested the Chairperson to send a letter to the Government of Brazil, informing it that it had considered further the situation of the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona peoples in the indigenous area of Raposa Serra do Sol (RSS) of the State of Roraima in light of the responses provided by the Government on 3 January 2007 to the questions raised in its letter of 18 August 2006, as well as of the additional information received from non-governmental organizations. The Committee thanked the Government of Brazil for the responses provided and requested additional written information and clarification no later than 1 July 2007. It also invited a delegation of the State party to be present at its seventy-first session so as to allow for a constructive dialogue on this issue between the Committee and the State party.

26. At its seventy-first session, the Working Group on Early Warning and Urgent Action held a dialogue in a closed meeting with Ambassador Sergio Abreu e Lima Florencio, Deputy Permanent Representative of Brazil to the United Nations at Geneva. The Committee requested the Chairperson to send a letter to the Government of Brazil welcoming the responses provided orally and in writing to its questions, while requesting further clarification and additional written information on latest developments no later than 30 November 2007, in order to further decide on any action to be taken under the early warning and urgent action procedure.

27. At its seventieth session, the Committee requested the Chairperson to send a letter to the Government of Nicaragua, informing it that the Committee had considered on a preliminary basis under its early warning and urgent action procedure information with regard to the situation of the Awas Tingni community located in the Atlantic region of Nicaragua, particularly concerning the protection of land rights, on the basis of information provided by the State party and other sources.

28. At its seventy-first session, following receipt of further information from non-governmental sources drawing the attention of the Committee to some urgent concerns, the Committee requested the Chairperson to send a further letter to the State party requesting the submission of additional information no later than 30 September 2007, and stating that the situation of the Awas Tingni community would be raised during the consideration of the periodic report of Nicaragua at the seventy-second session.

29. At its seventy-first session, the Committee requested the Chairperson to send a letter to the Government of Chile, informing it that the Committee had considered on a preliminary basis under its early warning and urgent action procedure information with regard to the situation of the Mapuche community in the Araucanía region. The Committee requested the State party to submit a response to a series of questions on the issue no later than 30 November 2007. The Committee further reminded the State party that its fourteenth to eighteenth periodic reports were overdue and requested that they be submitted in a single document by 30 June 2008.

30. At its seventy-first session, the Committee requested the Chairperson to send a letter to the Government of the Philippines informing it that the Committee had considered on a preliminary basis under its early warning and urgent action procedure information with

regard to the situation of the Subanon of Mount Canatuan, Siocon, Zambonga del Norte. Recalling its concluding observations of 1997 and in view of the fact that the problems faced by this indigenous community seemed to call for immediate attention, the Committee requested the State party to respond to a series of questions no later than 31 December 2007. The Committee further reminded the State party that its fifteenth to nineteenth periodic reports were overdue. It therefore strongly encouraged the State party to submit its overdue reports, in a single document, by 30 June 2008.

Note

[1] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), para. 18 and annex III.

III. CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

ANTIGUA AND BARBUDA

31. The Committee considered the initial to ninth periodic reports of Antigua and Barbuda - due in 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003 and 2005, respectively, and submitted in a single document (CERD/C/ATG/9) - at its 1802nd and 1803rd meetings (CERD/C/SR.1802 and 1803), held on 28 February and 1 March 2007. At its 1813th meeting (CERD/C/SR.1813), held on 8 March 2007, it adopted the following concluding observations.

A. Introduction

32. The Committee welcomes the initial to ninth periodic reports of Antigua and Barbuda and the opportunity thus offered to begin an open and constructive dialogue with the State party. The Committee expresses appreciation for the supplementary information provided by the delegation in writing, as well as the comprehensive and thorough answers to the wide range of questions raised by members of the Committee.

33. The Committee notes that the report was the first report to be submitted to the Committee since the State party ratified the Convention in 1988. It invites the State party to make every effort to respect the deadlines suggested by the Committee for the submission of its future reports.

34. The Committee appreciates the fact that the report, the general form and contents of which are consistent with the Committee's guidelines, is the result of cooperation between relevant State institutions. It does, however, regret that it does not contain sufficient information on the practical application of the Convention.

B. Positive aspects

35. The Committee notes with satisfaction that the State party, in addition to the Convention on the Elimination of All Forms of Racial Discrimination, has ratified three of the core United Nations human rights treaties, namely the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography. The Committee is confident that the State party will take the necessary measures to ratify the other human rights treaties.

36. The Committee wishes to commend the State party for the establishment of the Office of the Ombudsman. It also notes with satisfaction the creation of a legal aid clinic to assist the poor and underprivileged in gaining access to courts in the State party.

37. The Committee notes with satisfaction the State party's commitment to make every effort to guarantee that non-citizens, including economic migrants, can exercise their human rights without discrimination. It wishes to commend the State party for the various measures in place to

offer a route to citizenship for all non-citizens who make a positive contribution to Antigua and Barbuda.

C. Concerns and recommendations

38. The Committee notes with concern the declaration entered by the State party at the time of ratification of the Convention, in particular its wording that acceptance of the Convention does not imply the acceptance of obligations going beyond the constitutional limits, nor the acceptance of any obligations to introduce judicial processes beyond those provided in the Constitution.

The Committee encourages the State party to consider withdrawing the declaration entered upon acceding to the Convention.

39. The Committee regrets the lack of information provided regarding the application of article 16 of the Constitution, which allows for derogations from provisions of the Constitution, including the prohibition of non-discrimination, during states of emergency.

The Committee invites the State party to provide such information, with any concrete derogations made, if any, and constitutional safeguards in place in its next periodic report.

40. The Committee regrets the absence of a national human rights institution set up in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex).

The Committee recommends that the State party consider the establishment of a national human rights institution, in accordance with General Assembly resolution 48/134, annex.

41. The Committee expresses its concern about the definition of racial discrimination given in article 14 of the Constitution, which is not completely consistent with article 1 of the Convention as it does not include "national or ethnic origin" among the prohibited grounds of discrimination (art. 1).

The Committee invites the State party to bring its internal law in line with the Convention by including "national or ethnic origin" among the prohibited grounds of discrimination in article 14 of the Constitution.

42. The Committee is concerned that in accordance with article 14 of the Constitution, the prohibition of non-discrimination "shall not apply to any law so far as the law makes provision [...] with respect to persons who are not citizens". It also notes that pursuant to article 8 of the Constitution, a law shall not be regarded as unconstitutional merely because it restricts the freedom of movement of non-citizens (arts. 1 and 5).

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens, and recommends that the State party review its Constitution and legislation in order to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in the Convention to the extent recognized under international law.

43. The Committee notes the State party's assertion that although article 14, paragraph 4, of the Constitution allows for special measures to be taken, as envisaged in articles 1, paragraph 4 and 2, paragraph 2, of the Convention, no such measures have been adopted because no racial or ethnic groups in Antigua and Barbuda presently require such special protection (art. 1 (4) and art. 2 (2)).

The Committee encourages the State party to engage in a data-gathering exercise to ensure that its perceptions concerning the lack of need of special measures does not arise from a lack of information on such racial or ethnic groups.

44. While noting the relative homogeneity of the population to date, the Committee is concerned about the lack of disaggregated statistical data on the number and economic situation of persons from all ethnic and national origins in Antigua and Barbuda. In the absence of such statistical information, the Committee finds it difficult to assess the extent of racial and ethnic discrimination within the territory of the State party, and how the Convention is being applied in practice (art. 2).

The Committee invites the State party to include more detailed questions in the population census so as to get a better idea of the ethnic and national origin composition of the population, and in this regard draws the State party's attention to paragraph 8 of its general guidelines on the form and contents of reports (CERD/C/70/Rev.5). It recommends that a question on ethnic and national origin be included in all data-gathering, following the example of the current Poverty Assessment Initiative.

45. The Committee notes the State party's assertion that alleged "segregation" of immigrant groups in distinct communities in Antigua and Barbuda refers to "the voluntary actions of such immigrants rather than to any State imposed segregation". The Committee is nonetheless concerned that such de facto segregation may result from private practices and certain social and economic conditions, which the State party does not address (art. 3).

The Committee requests that the State party proceed with an analysis of the reasons behind the concentration of certain immigrant groups in distinct areas of Antigua and Barbuda, and address any actions of private parties which may result in de facto segregation, bearing in mind its general recommendation No. 19 (1995) on Racial segregation and apartheid (art. 3).

46. The Committee regrets that Antigua and Barbuda considers that no additional efforts are required at this time to harmonize domestic law with the provisions of the Convention, and that it does not consider it necessary to adopt legislation meeting the requirements of article 4 of the Convention, beyond those offences provided for in the Labour Code (art. 4).

The Committee encourages the State party to comply with the requirements of article 4 of the Convention, in particular by declaring an offence punishable by law all dissemination of ideas based on racial superiority or hatred, and incitement to racial discrimination, as well as all acts of violence or incitement to such acts; and declaring illegal and prohibiting organizations which promote and incite racial discrimination.

47. The Committee regrets that the State party report did not provide any information to enable the Committee to assess the equal enjoyment of all human rights by the members of the various groups constituting the population, including migrant workers (art. 5).

The Committee recommends that the State party provide information about the non-discriminatory implementation of the rights and freedoms referred to in article 5 of the Convention, as specified in general recommendation No. 20 (1996) on non-discriminatory implementation of rights and freedoms (art. 5), in particular on education, health and housing, and especially as they relate to migrants.

48. While the Committee welcomes the abolition of the practice of excluding children of non-citizens from State schools for the first two years of their stay in Antigua and Barbuda, it notes that children continue to be excluded due to lack of resources of certain schools, that there are no mechanisms in place to check the reasons for these exclusions, and to ensure that no child is denied access to education (art. 5 (e) (v)).

The Committee recommends that the State party engage in a systematic review of any exclusions of children from schools to monitor the reasons for such exclusion, and that an independent mechanism be set up to administer the review and ensure that all children, whatever their social or national origins, enjoy the right to education.

49. The Committee, while noting the information provided regarding the participation of women in public offices and government positions, remains concerned about the absence of statistical data on the representation of ethnic minorities in public offices and government positions (art. 5 (c) and (e) (i)).

The Committee recommends that the State party ensure that all ethnic minorities have adequate opportunities to participate in the conduct of public affairs at all levels. It particularly requests the State party to provide in its next periodic report updated statistical information on the percentage and functions of minority representatives holding public offices and government positions.

50. The Committee reminds the State party that it has difficulties in accepting the mere assertion made by States parties as to the absence of racial discrimination in their territory. It regrets the lack of information on the effective protection and remedies available through the competent national tribunals against any acts of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination (art. 6).

The Committee requests that the State party include in its next periodic report statistical information on measures taken in cases of offences which relate to racial discrimination, and where the relevant provisions of the existing domestic legislation have been applied. The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, of insufficient will on the part of the authorities to prosecute, or of the authorities' lack of attention, sensitivity or training (including for judges and lawyers) to cases of racial discrimination. The Committee requests the State party to ensure that appropriate provisions are available in national legislation, and to inform the public about all legal remedies in the field of racial discrimination.

51. The Committee regrets the lack of information on the types of cases which the Ombudsman is called upon to address, and in particular whether complaints of racial discrimination have been brought to her attention. It also notes that the Ombudsman has few powers to ensure compliance with her findings (art. 6).

The Committee invites the State party to provide information on any complaints of racial discrimination which the Ombudsman has addressed, and to consider strengthening the implementation of her recommendations and findings.

52. The Committee is concerned that the substance of the Convention has not been brought to the attention of the public, although it notes with appreciation the holding of a Diversity Day in May 2007 to raise the awareness of the public to the benefits of a fully integrated and ethnically diverse society (art. 7).

The Committee recommends that the State party disseminate broadly the substance of the Convention and step up its efforts to make people aware of the opportunities they have to appeal against instances of racial discrimination.

53. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to resolution 59/176 of 20 December 2004, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

54. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and urges the State party to consider doing so.

55. The Committee recommends that the State party accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

56. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report specific information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

57. The Committee recommends that the State party present a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

58. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized.

59. The Committee recommends that the State party consult widely with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

60. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 40, 44 and 46 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

61. The Committee recommends that the State party submit its tenth and eleventh periodic reports in a single report, due on 24 November 2009, and that the report be comprehensive and address all points raised in the present concluding observations.

CANADA

62. The Committee considered the seventeenth and eighteenth periodic reports of Canada, submitted in one document (CERD/C/CAN/18), at its 1790th and 1791st meetings (CERD/C/SR.1790 and CERD/C/SR.1791), held on 20 and 21 February 2007. At its 1808th meeting (CERD/C/SR.1808), held on 5 March 2007, it adopted the following concluding observations.

A. Introduction

63. The Committee welcomes the report submitted by the State party which is in conformity with the reporting guidelines, and notes with appreciation the regularity in the submission of reports, in compliance with the requirements of the Convention. Furthermore, the Committee appreciates the extensive and detailed responses provided to the questions asked during the consideration of the report and the open and constructive dialogue with the delegation.

B. Positive aspects

64. The Committee welcomes the adoption, in March 2005, of Canada's Action Plan Against Racism: A Canada for All, including the Racism-Free Workplace Strategy.

65. The Committee also welcomes the enactment of the Human Rights Act in Nunavut, which prohibits racial discrimination.

66. The Committee notes with satisfaction the establishment of the Canadian Coalition of Municipalities against Racism and Discrimination.

67. The Committee welcomes the establishment, in 2005, of the Cross-Cultural Roundtable on Security, designed to provide a forum for dialogue between the Government and community representatives to discuss emerging trends and developments in national security measures.

68. The Committee notes with appreciation the expressed commitment of the State party to address through negotiations the assertion of Aboriginal rights and title to land.

69. The Committee notes with satisfaction: (a) the amendments made in December 2001 to the Canadian Human Rights Act and the Criminal Code, which strengthen domestic legislation against hate crimes on the Internet; (b) the establishment of an "Anti-Hate Team", dealing specifically with hate crimes within the Canadian Human Rights Commission, composed of investigative, legal and policy officers with specialized expertise in the investigation of hate on the Internet; and (c) the establishment of the Hate Crimes Community Working Group in Ontario, with the view to reducing the incidence of hate crimes and to better address the needs of hate crime victims.

70. The Committee also notes with satisfaction the decision taken by the State party to halve the Right of Permanent Residence Fee (RPRF), aimed at lessening the financial burden upon new immigrants arriving in Canada.

71. The Committee notes with satisfaction the reduction achieved in the backlog and the length of time taken to process complaints by the Canadian Human Rights Commission.

C. Concerns and recommendations

72. The Committee regrets the paucity of available disaggregated data that allows for an overall assessment of the socio-economic conditions of various ethnic and racial groups in the population, including African Canadians, particularly in the fields of employment and education. The Committee also notes the absence of general statistical information on hate crimes, racial profiling and policing, disaggregated by ethnic and racial group.

The Committee recommends that the State party consider implementing a nationwide collection of disaggregated data based on racial and ethnic groups, as well as gender, which will allow for a better evaluation of the overall situation of different racial and ethnic groups in the State party.

73. The Committee, while welcoming the information that the Action Plan Against Racism: A Canada for All, together with other initiatives mentioned by the State party, will, inter alia, ensure the coordination of efforts of federal departments and provincial/territorial governments in the fight against racism, is concerned about remaining discrepancies in the level of implementation of the Convention among the provinces.

The Committee underscores once again the responsibility of the Federal Government of Canada for the implementation of the Convention, and urges the State party to ensure that the existing inter-provincial mechanisms for exchange of information concerning their anti-racism legislation and policies, including "good practices", continue to be strengthened.

74. While noting the position of the State party according to which the use of the term "visible minorities" is specific to the Employment Equity Act and is not used for the purpose of defining racial discrimination, the Committee notes that the term is widely used in official documents of the State

party, including the census. The Committee is concerned that the use of the term "visible minorities" may not be in accordance with the aims and objectives of the Convention (art. 1).

The Committee recommends that the State party reflect further, in line with article 1, paragraph 1 of the Convention, on the implications of the use of the term "visible minorities" in referring to "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour" (Employment Equity Act, 1995).

75. The Committee is concerned about the heightened risks of racial profiling and discrimination on the ground of racial or ethnic origin in the context of increased national security measures in the State party, and in particular, in the application of the Anti-Terrorism Act (2001). The Committee is also concerned about the use by the State party of security certificates under the Immigration and Refugee Protection Act which provides for indefinite detention without charge or trial of non-nationals who are suspected of terrorism-related activities. The Committee notes in this respect the findings of the Supreme Court in the case *Charkaoui v. Canada*, of 23 February 2007 (art. 2).

While acknowledging the State party's national security concerns, the Committee underlines the obligation of the State party to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin. The Committee urges the State party to continue to review existing national security measures, and to ensure that individuals are not targeted on the ground of race or ethnicity. The Committee also recommends that the State party undertake sensitization campaigns to protect persons and groups from stereotypes associating them with terrorism. The Committee further recommends that the State party consider amending the Anti-Terrorism Act to include an explicit anti-discrimination clause.

76. The Committee notes with regret the lack of substantial progress made by the State party in its efforts to address residual discrimination against First Nations women and their children in matters relating to Indian status, band membership and matrimonial real property on reserve lands, despite its commitment to resolving this issue through a viable legislative solution (arts. 2 and 5 (d)).

The Committee urges the State party to take the necessary measures to reach a legislative solution to effectively address the discriminatory effects of the Indian Act on the rights of Aboriginal women and children to marry, to choose one's spouse, to own property and to inherit, in consultation with First Nations organizations and communities, including Aboriginal women's organizations, without further delay.

77. While noting that section 718.2 of the Criminal Code establishes racial discrimination as an aggravating circumstance in sentencing offenders, the Committee remains concerned: (a) about the absence of legislation that criminalizes and punishes acts of racist violence, as required by article 4 (a) of the Convention; and (b) that under the Criminal Code, criminal liability cannot be established on the basis of the nature of racist organizations (art. 4).

The Committee recalls its general recommendation No. 15 (1993) on article 4, according to which all provisions of this article are of mandatory character, and recommends that the

State party amend or adopt relevant legislation in order to ensure full compliance with this article.

78. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts. 2.1 (d), 4 (a) and 5 (e)).

In light of article 2.1 (d) and article 4 (a) and (b) of the Convention and of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.

79. The Committee is concerned that under the Immigration and Refugee Protection Act (IRPA), non-citizens, including asylum-seekers, may be remanded in custody when they are not able to produce a valid identity document, or on suspicion of having provided a false identity. Despite assurances by the State party that detention is used as a last resort and kept to the minimum length of time possible, the Committee remains concerned that there is no maximum time limit for the period of custody, and that detention on grounds of lack of a valid identity document may have an adverse effect on stateless persons and asylum-seekers from countries in which particular conditions make it difficult to obtain identity documents (art. 5 (a)).

The Committee draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and general recommendation No. 30 (2004) on discrimination against non-citizens, and recommends that the State party ensure that detention be imposed only on objective grounds stipulated in law, such as the risk of flight, the risk that the person might destroy evidence or influence witnesses, or the risk of serious disturbance of public order. It further recommends that the State party ensure that the persons detained enjoy all the rights to which they are entitled under the relevant international norms.

80. While welcoming the introduction of the initiative entitled "Addressing Race-Based issues" in the Justice system, as part of the Action Plan Against Racism, the Committee is concerned about the disproportionate use of force by the police against African Canadians and the disproportionately high rate of incarceration of aboriginal peoples compared with the general population (art. 5 (a)).

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party give preference, wherever possible, to alternatives to imprisonment with respect to aboriginal persons, considering the

negative impact of separation from their community that imprisonment may entail. Furthermore, the Committee recommends that the State party increase its efforts to address socio-economic marginalization and discriminatory approaches to law enforcement, and consider introducing a specific programme to facilitate reintegration of aboriginal offenders into society.

81. While acknowledging measures taken by the State party, including the support extended to the Sisters in Spirit Initiative of the Native Women's Association of Canada (NWAC), the Committee remains concerned about serious acts of violence against Aboriginal women, who constitute a disproportionate number of victims of violent death, rape and domestic violence. Furthermore, the Committee is concerned that services for victims of gender-based violence are not always readily available or accessible, particularly in remote areas (art. 5 (b)).

In light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party strengthen and expand existing services, including shelters and counselling, for victims of gender-based violence, so as to ensure their accessibility. Furthermore, it recommends that the State party take effective measures to provide culturally-sensitive training for all law enforcement officers, taking into consideration the specific vulnerability of aboriginal women and women belonging to racial/ethnic minority groups to gender-based violence.

82. While welcoming the commitments made in 2005 by the Federal Government and provincial/territorial governments under the Kelowna Accord, aimed at closing socio-economic gaps between Aboriginal and non-Aboriginal Canadians, the Committee remains concerned at the extent of the dramatic inequality in living standards still experienced by Aboriginal peoples. In this regard, the Committee, recognizing the importance of the right of indigenous peoples to own, develop, control and use their lands, territories and resources in relation to their enjoyment of economic, social and cultural rights, regrets that in its report, the State party did not address the question of limitations imposed on the use by Aboriginal people of their land, as previously requested by the Committee. The Committee also notes that the State party has yet to fully implement the 1996 recommendations of the Royal Commission on Aboriginal Peoples (art. 5 (e)).

In light of article 5 (e) and of general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to allocate sufficient resources to remove the obstacles that prevent the enjoyment of economic, social and cultural rights by Aboriginal peoples. The Committee also once again requests the State party to provide information on limitations imposed on the use by Aboriginal people of their land, in its next periodic report, and that it fully implement the 1996 recommendations of the Royal Commission on Aboriginal Peoples without further delay.

83. While acknowledging the information that the "cede, release and surrender" approach to Aboriginal land titles has been abandoned by the State party in favour of "modification" and "non-assertion" approaches, the Committee remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach. The Committee is also concerned that claims of Aboriginal land rights are being settled primarily through litigation, at a

disproportionate cost for the Aboriginal communities concerned due to the strongly adversarial positions taken by the federal and provincial governments (art. 5 (d)(v)).

In line with the recognition by the State party of the inherent right of self-government of Aboriginal peoples under section 35 of the Constitution Act, 1982, the Committee recommends that the State party ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights. Wherever possible, the Committee urges the State party to engage, in good faith, in negotiations based on recognition and reconciliation, and reiterates its previous recommendation that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts. Treaties concluded with First Nations should provide for periodic review, including by third parties, where possible.

84. The Committee is concerned that undocumented migrants and stateless persons, particularly those whose application for refugee status is rejected but who cannot be removed from Canada, are excluded from eligibility for social security and health care, as it requires proof of residence in one of the provinces in the State party. The Committee is concerned about allegations that in some of the provinces, stateless children and undocumented migrant children are not eligible for schooling (art. 5 (e)).

The Committee recommends that the State party consider ratifying the 1954 Convention relating to Status of Stateless Persons and the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families. The Committee urges the State party to take necessary legal and policy measures to ensure that undocumented migrants and stateless persons whose asylum applications have been rejected are provided with access to social security, health care and education in all provinces and territories, in line with article 5 (e) of the Convention. The Committee also recommends that the State party consider amending the Immigration and Refugee Protection Act (IRPA) so as to explicitly include statelessness as a factor of humanitarian and compassionate consideration.

85. The Committee, while acknowledging the important role played by the Canadian Human Rights Commission in eradicating racial discrimination in the field of employment, including its audit of federally regulated employers pursuant to the Employment Equity Act (EEA), remains concerned that minority groups within the meaning of article 1 of the Convention, in particular, African Canadians and Aboriginal peoples, continue to face discrimination in recruitment, remuneration, access to benefits, job security, qualification recognition and in the workplace, and are significantly underrepresented in public offices and government positions (art. 5 (e) (i)).

The Committee recommends that legislation prohibiting discrimination in employment and all discriminatory practices in the labour market be fully implemented in practice and that further measures be taken to reduce unemployment among the minority groups, particularly among African Canadians and aboriginal peoples. The Committee also encourages the State party to strengthen or adopt, as necessary, specific programmes to ensure appropriate representation of ethnic communities in government and public administration, at federal and

provincial/territorial levels. The Committee requests the State party to include information on the measures taken and the results achieved in its next periodic report.

86. The Committee, while welcoming the recent decision of the State party to repeal section 67 of the Canadian Human Rights Act (CHRA) which effectively shielded the provisions of the Indian Act and decisions made pursuant to it from the protection provided by the Act, notes that the repeal in itself does not guarantee enjoyment of the right to access to effective remedies by on-reserve Aboriginal individuals (art. 6).

The Committee urges the State party to engage in effective consultations with aboriginal communities so that mechanisms to ensure adequate application of the Canadian Human Rights Act (CHRA) with regard to complaints under the Indian Act are put in place following the repeal.

87. While noting the existence of relevant legal aid mechanisms, the Committee is concerned about the difficulties of access to justice for aboriginal peoples, African Canadians and persons belonging to minority groups within the meaning of article 1 of the Convention, in particular in light of the decision announced by the State party on 25 September 2006 to cancel the Court Challenges Program which had provided funds to support test cases "in order to clarify the rights of official language minority communities and the equality rights of disadvantaged groups" (State party report, para. 80), and that no equivalent support mechanism has been put in place (art. 6).

The Committee recommends that the State party take the necessary measures to ensure access to justice for all persons within its jurisdiction without discrimination. In this connection, the Committee urges the State party to reinstate the Court Challenges Program, or devise a functional replacement mechanism with equivalent effect, as a matter of priority.

88. In view of the positive contributions made and the support given by the State party in the process leading up to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee regrets the change in the position of the State party in the Human Rights Council and the General Assembly.

The Committee recommends that the State party support the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and that it consider ratifying the ILO Indigenous and Tribal Peoples Convention No. 169.

89. It is noted that the State party has not made the optional declaration provided for in article 14 of the Convention, and the Committee recommends that the possibility of such a declaration be considered.

90. The Committee recommends that the State party continue to take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Declaration and Programme of Action at the national level.

91. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of combating racial discrimination in connection with the preparation of the next periodic report.

92. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

93. The State party should provide information within one year on the way it has followed up on the Committee's recommendations contained in paragraphs 75, 82, 83 and 87 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

94. The Committee recommends that the State party submit its nineteenth periodic report jointly with its twentieth periodic report in a single document on 15 November 2009, and that it address all points raised in the present concluding observations.

CZECH REPUBLIC

95. The Committee considered the sixth and seventh periodic reports of the Czech Republic, submitted as one document (CERD/CZE/7), at its 1804th and 1805th meetings (CERD/C/SR.1804 and 1805), held on 1 and 2 March 2007. At its 1814th and 1815th meetings (CERD/C/SR.1814 and 1815), held on 8 and 9 March 2007, it adopted the following concluding observations.

A. Introduction

96. The Committee welcomes the timely submission of the report, which included statistical data and responses to the concerns raised in the Committee's previous concluding observations (CERD/C/63/CO/4). The Committee also expresses appreciation for the frank dialogue held with the delegation and for the comprehensive and thorough answers provided, including in writing, to the list of issues and the wide range of questions raised by members of the Committee.

B. Positive aspects

97. The Committee welcomes the entry into force on 1 January 2007 of the Services Act, setting out the principle of equal treatment for all State employees with regard to conditions of performance of service, remuneration and other financial payments, education and promotion.

98. The Committee welcomes the adoption of the new Employment Act of 2004, which prohibits direct and indirect discrimination in the enjoyment of the right to work, in particular on the grounds of race or ethnic origin, nationality, citizenship, descent, language and religion or belief.

99. The Committee welcomes the assurances provided by the delegation that, under the new Education Act of 2004, basic education will be provided to all regardless of citizenship and legality of residence. The State party should provide more detailed information on this issue, in particular on any

remaining distinctions between citizens and non-citizens in accessing primary and secondary education, as well as in participating in regular activities organized in schools.

100. The Committee notes with satisfaction that the State party ratified the European Convention on Nationality and the Convention Relating to the Status of Stateless Persons in 2004, as well as the European Charter for Regional or Minority Languages in 2006, bearing in mind the relevance of these conventions for the implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

C. Concerns and recommendations

101. The Committee appreciates that data collected by the State party on the ethnic composition of its population are based upon self-identification by the individual concerned, in compliance with the Committee's general recommendation VIII (1990) on identification with a particular racial or ethnic group (art. 1, paras. 1 and 4). It also welcomes the efforts made by the State party to provide a qualitative assessment of the numbers of the Roma who consider themselves part of this community. It notes, however, the significant discrepancies between statistical data and qualitative estimates, suggesting the limitations of purely statistical data to assess the economic and social situation of groups, in particular the Roma.

The State party should enhance its efforts to qualitatively assess the situation of minority groups within the meaning of article 1 of the Convention, in particular the situation of persons who consider themselves part of the Roma community. It should also review its methods of data collection so as to more fully reflect the principle of self-identification. Any such steps should be taken in consultation with the Roma community.

102. The Committee reiterates its concern that, despite efforts to that end, the State party has still not adopted a general anti-discrimination law guaranteeing the right to equal treatment and protection against discrimination (arts. 1, 2 and 5).

The Committee recommends again that the State party adopt legislation providing for the prohibition of discrimination based on colour, race, descent, national or ethnic origin, as defined in article 1 of the Convention, as a general principle applicable in the political, economic, social and cultural spheres or any other field of public life.

103. The Committee notes that, when explaining the grounds of application of sections 260, 261 and 261 (a) of the Criminal Code, the State party refers to "Nazi or Communist genocide" (CERD/C/CZE/7, para. 47, note 45), and explains it by mixing up the ideas of hate crimes, racist propaganda and genocide with that of class struggle. Such confusion not only weakens the objective of fighting racial discrimination, but also politicizes a phenomenon like genocide, which is abhorrent in itself.

The Committee urges the State party to ensure that such confusion of questions of different nature is not made in the application of the Criminal Code.

104. The Committee notes the decrease in the number of neo-Nazi concerts known to the Police since 2004, as well as efforts undertaken by the State party to establish guidelines for the police to prevent their organization. It remains deeply concerned however by information according to which action taken by the public authorities to prevent and prosecute the organization of, and participation in, such concerts is neither systematic nor sufficient (art. 4).

The Committee urges the State party to ensure that the organization of, and participation in, racist concerts are prevented, prosecuted, and punished accordingly. The authorities of the State party, in particular the police, should adopt a proactive and vigorous policy to ensure that such concerts do not take place, and impede the distribution of related propaganda.

105. The Committee, while noting the responses provided by the delegation that in 2006 no crimes by police officers with racist undertones were registered by the Inspectorate of the Ministry of Interior, reiterates its concern about information according to which Roma, in particular children, are subject to ill-treatment by police officers and are placed in detention and coerced into confessing minor crimes. While welcoming the ongoing discussion undertaken by the State party towards the establishment of a new system, independent of the Ministry of Interior, to investigate unlawful conduct by the police the Committee regrets that this has not yet been done (art. 4).

The Committee strongly recommends that the State party, in accordance with its general recommendations XXXI (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and XXVII (2000) on discrimination against Roma, ensure that allegations of police ill-treatment and misconduct towards persons belonging to minority groups, in particular the Roma, are promptly and impartially investigated and prosecuted. The State party should ensure the rapid establishment of a new system or body independent of the police and the Ministry of Interior. The Committee also wishes to receive detailed information and statistical data on the ethnic composition of the prison population, indicating in particular the proportion of Roma and non-citizens.

106. The Committee notes with concern that efforts undertaken by the State party to improve the relationship and mutual understanding between the Roma and the police and to encourage recruitment of members of Roma communities into the police have not enjoyed great success (arts. 4 and 7).

The State party should significantly enhance its efforts to improve the relationship and mutual understanding between the Roma and the police, and to ensure recruitment of members of the Roma into the police and other law enforcement agencies. The Committee also urges the State party to ensure that hate speech against the Roma, by public officials or other persons, does not enjoy impunity.

107. The Committee is deeply concerned by the prevailing negative sentiments and stereotypes concerning the Roma among the Czech population (arts. 4 and 7).

The State party should strive to improve the relations between Roma communities and non-Roma communities, in particular at the local level, with a view to promoting tolerance and ensuring that all persons fully enjoy their human rights and freedoms.

108. The Committee notes with concern that women, a high proportion of which being Roma women, have been subjected to coerced sterilization. It welcomes the inquiries undertaken by the Public Defender of Rights on this matter, but remains concerned that to date, the State party has not taken sufficient and prompt action to establish responsibilities and provide reparation to the victims. While noting that a distinction should be drawn between sterilizations that have occurred before and after 1991, when an official policy encouraging such violations was ended, the Committee is deeply concerned that the State party has not taken sufficient action to abide by its positive obligation to impede their illegal performance by doctors after 1991, and that sterilizations without the prior informed consent of women are reported to have been carried out as late as 2004 (arts. 2, 5 (b) and (e) (iv), and (6)).

The State party should take strong action, without further delay, to acknowledge the harm done to the victims, whether committed before or after 1991, and recognize the particular situation of Roma women in this regard. It should take all necessary steps to facilitate victims' access to justice and reparation, including through the establishment of criminal responsibilities and the creation of a fund to assist victims in bringing their claims. The Committee urges the State party to establish clear and compulsory criteria for the informed consent of women prior to sterilization and ensure that criteria and procedures to be followed are well known to practitioners and the public.

109. The Committee is concerned that, despite the adoption of the new Employment Act of 2004 and programmes undertaken by the State party, unemployment among Roma continues to be particularly high and that Roma face persistent discrimination in recruitment (arts. 2 and 5 (e) (i)).

The State party should adopt more effective strategies to promote the employment of Roma in the public administration and institutions, as well as in private companies, and to ensure that they are not discriminated against in the enjoyment of their right to work.

110. The Committee reiterates its concern about information according to which Roma people are particularly vulnerable to evictions and segregation in housing, and regrets that the State party has not taken sufficient action to tackle this issue. While noting the undertaking of the State party to support the construction of subsidized flats by municipalities, the Committee is concerned that the autonomy of municipalities under domestic law is described by the State party as an obstacle to the fulfilment of its obligations to ensure the enjoyment of the right to housing by all without discrimination, in particular at the local level. It is further concerned that domestic regulations do not clearly prohibit racial discrimination in the enjoyment of the right to housing (arts. 2, 3 and 5 (e) (iii)).

The Committee reminds the State party that it may not invoke the provisions of its internal law as a justification for its failure to implement the Convention, and urges the State party to adopt all steps necessary to ensure the right to housing to all without discrimination, whether direct or indirect, based on race, colour, descent or national or ethnic origin, including in particular at the local level. The State party should ensure that domestic legislation clearly prohibits racial discrimination in the enjoyment of the right to housing, and protects vulnerable persons, including Roma, from evictions. In particular, such legislation should include measures providing the

greatest possible security for tenants and strictly enumerate the circumstances under which evictions may be carried out.

111. The Committee is deeply concerned by consistent information according to which the Roma suffer racial segregation on the State party's territory in the field of education, a situation that the State party does not seem to fully acknowledge. It notes with particular concern that a disproportionately large number of Roma children attend "special schools". While noting the views of the State party that this results from the vulnerable situation of the Roma and the need to adopt special measures to respond to their needs, and having taken note of the new Education Act, the Committee remains concerned that this situation also seems to result from discriminatory practices and lack of sensitivity on the part of the authorities to the cultural identity and specific difficulties faced by the Roma. Special measures for the advancement of certain groups are legitimate provided that they do not lead, in purpose or in practice, to the segregation of communities. The Committee is also deeply concerned that a disproportionately large number of Roma children are being removed from their families and placed in State institutions or foster care (arts. 2, 3 and 5 (e) (iii) and (v)).

The State party should increase its efforts to assess the situation of the Roma in the field of education. It should develop effective programmes specifically aimed at putting an end to the segregation of Roma in this area, and ensure that Roma children are not deprived of their right to family life and to education of any type or any level. The Committee, in particular, recommends that the State party review the methodological tools used to determine the cases in which children are to be enrolled in special schools so as to avoid indirect discrimination against Roma children on the basis of their cultural identity.

112. The Committee notes that several distinctions made under domestic law between the rights of citizens and non-citizens may not be fully justified. It notes in particular that European Union non-citizens, although they are entitled to vote and be elected at local elections, may not belong to a political party. The Committee also notes with concern that a condition under the Act on Registered Partnerships between Persons of the Same Sex, currently under debate in Parliament, may be that at least one of the persons be a Czech citizen (art. 5).

The Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens, and recalls that differential treatment based on citizenship constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

113. The Committee notes that the Office of the Ombudsman, which is authorized to deal with complaints against State institutions and administrations listed in the Act on the Public Defender of Rights, has received very few complaints of racial discrimination. It is concerned that, because of delays in the adoption of general anti-discrimination legislation, no specific institution has been mandated to safeguard the right to equal treatment, assist victims in bringing their claims, or receive complaints of racial discrimination in the private sector. The Committee is further concerned that difficulties in obtaining legal aid continue to be an important barrier preventing victims of racial discrimination from bringing cases before the courts (art. 6).

The Committee reminds the State party that a low number of complaints by victims of racial discrimination could result from the inadequate character of relevant specific

legislation, from the victims' ignorance of their individual rights and of the availability of legal remedies, and from their lack of confidence in the justice system. The State party should assess the extent to which such possible obstacles impede victims from bringing their claims and take appropriate action to overcome them where necessary. The Committee also recommends that the State party ensure that a specific institution be mandated to promote and monitor the right to equal treatment, to assist victims in bringing their claims including through legal aid, and to receive complaints of racial discrimination in both the public and the private sectors.

114. The Committee, bearing in mind that under the Constitution, the Convention takes precedence over domestic law, notes the absence of instances where the Convention has been invoked before national courts and has prevailed over domestic legislation (arts. 2 and 7).

The State party should increase its efforts to train judges and lawyers on the content of the Convention and its status under domestic law.

115. The Committee regrets that it has not received sufficient information on the extent to which school curricula provide for intercultural as well as multicultural education, and on action taken to ensure the right of persons belonging to minorities to participate in cultural life (arts. 5 (e) (vii) and 7).

The Committee recommends that the State party include in textbooks, at all appropriate levels, chapters about the history and culture of minorities, including the Roma, and encourage and support the publication and distribution of books and other printed materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them. The Committee also recommends that the State party ensure the participation of minorities in the elaboration of such materials and programmes. It also wishes to receive more information about the extent to which minority languages, including the Roma languages, are taught in schools and used as languages of instruction.

116. The Committee encourages the State party to envisage ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

117. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

118. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized.

119. The Committee recommends that the State party enhance its efforts to consult widely with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

120. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

121. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 102, 108, 111 and 113 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

122. The Committee recommends that the State party submit its eighth and ninth periodic reports in a single document, due on 1 January 2010, and that the report be an update document and address all points raised in the present concluding observations.

ETHIOPIA

123. At its 1806th meeting (CERD/C/SR/1806), held on 2 March 2007, the Committee considered the situation in Ethiopia with respect to the implementation of the Convention. In the absence of a report from the State party and based, inter alia, on information from other United Nations bodies, it adopted, at its 1816th meeting (CERD/C/SR.1816), on 9 March 2007, the following concluding observations.

A. Introduction

124. The Committee wishes to draw the attention of the State party to the fact that reporting is an obligation under article 9 of the Convention and that non-compliance in this regard creates serious obstacles to the effective functioning of the system set up to monitor the implementation of the Convention at the national level.

125. The Committee regrets that the State party has not reported to the Committee since it submitted its sixth periodic report (CERD/C/156/Add.3), which was considered by the Committee at its 871st and 872nd meetings, held on 10 and 13 August 1990 (CERD/C/SR.871-872). The Committee recalls that the situation in Ethiopia was considered under its review procedure, i.e. in the absence of a report from the State party, at its fifty-first session, held in August 1997 (CERD/C/SR.1217) and was again scheduled for consideration at its sixty-eighth session held in March 2006.

126. After receipt of a request from the State party for the postponement of the consideration of its situation under the review procedure, the Committee decided at its sixty-eighth session to adopt and send to the State party a list of issues to assist it in the drafting and submission of its overdue report by 31 December 2006. In light of the non-receipt of the report, and noting with regret that the State party was not able to respond to an invitation to participate in its 1806th meeting and submit relevant information, the Committee considered the situation in the State party under its review procedure and decided to adopt the following concluding observations.

B. Factors and difficulties impeding the implementation of the Convention

127. The Committee notes that the State party has faced, in addition to internal unrest, conflicts with neighbouring States in the past years, which have resulted, inter alia, in very large numbers of internally displaced persons and refugees.

128. The Committee also notes that the State party has suffered serious economic hardship in recent years, including famine, and that a significant part of its population suffers from extreme poverty due, inter alia, to adverse climatic conditions.

C. Positive aspects

129. The Committee notes with satisfaction the adoption of the constitution in 1994, which includes provisions on fundamental rights and freedoms enshrining, inter alia, the principle of equality and non-discrimination on grounds of race, nationality, social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

130. The Committee expresses its appreciation for the recognition, under the constitution, that every nation, nationality and people of Ethiopia has the right to speak and to develop its own language, as well as for the policy promoting these various languages as working languages, in several instances at the national level.

131. The Committee also notes with satisfaction the establishment of the Ethiopian Human Rights Commission and the Office of the Ombudsman in 2000, as provided under article 55 of the constitution, as well as the appointment of the Human Rights Commissioner and the Chief Ombudsman in 2004.

132. The Committee welcomes the adoption of refugee proclamation No. 409/2004 which affirms the principle of family unity and includes explicit provisions on the protection of the most vulnerable categories of refugees.

D. General concerns

133. According to information before the Committee, both from within the United Nations system and Ethiopian civil society, as well as from international non-governmental organizations, very serious violations of human rights along ethnic and racial lines have recently occurred in the State party.

134. In the above context, the Committee is alarmed by well-documented reports of grave incidents of racial discrimination and is deeply concerned that inter-ethnic conflicts could escalate to a much larger scale in the near future, fuelled by political tensions and violations of basic economic, social and cultural rights, and exacerbated by competition over natural resources, provision of food, access to clean water and agricultural land, thereby putting many ethnic groups at serious risk in the State party.

E. Specific concerns and recommendations

135. While acknowledging the complex federal structure of the State party, based on the nations, nationalities and peoples of Ethiopia, the Committee is concerned that, in the absence of disaggregated information on the ethnic composition and geographical location of the population of the State party, a clear vision of the diversity of Ethiopian society cannot be obtained, nor an accurate assessment made of the enjoyment of the rights provided for in the Convention by all the different nationalities and peoples of the State party (art. 1).

The Committee recommends that the State party include, in its overdue report, disaggregated data on the ethnic composition, geographical location and languages of

its population, at the federal and regional levels, and, in this connection, draws the attention of the State party to its general recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples and to paragraph 8 of its general guidelines (CERD/C/70/Rev.5) of 5 December 2000.

136. The Committee notes that, according to information received, disputes are often resolved at the district or local level (woreda or kebele) by religious or customary courts, in accordance with religious or customary laws, which might have discriminatory consequences for members of some ethnic groups (article 2 of the Convention).

The Committee recommends that the State party provide, in its overdue report, information on the status of religious and customary laws, including vis-à-vis the federal legislation, and on the measures undertaken by the State party to ensure that public authorities and officials, including those at the level of local religious and customary courts, act in conformity with article 2 (1) of the Convention.

137. While noting that article 13 of the constitution provides "that fundamental rights and freedoms specified [in the constitution] shall be interpreted in a manner conforming to the principles of [...] international instruments adopted by Ethiopia", the Committee lacks information about the status of the Convention in the domestic legal order, the possibility of invoking directly the Convention before national courts and on any legislation implementing the provisions of the Convention (articles 2 and 6 of the Convention).

The Committee recommends that the State party provide, in its overdue report, information on the status of the Convention in domestic law, the possibility of invoking its provisions directly before national courts and on the existence of specific legislation implementing the provisions of the Convention.

138. The Committee is concerned that the decentralized system of ethnic federalism adopted by the State party through its constitution could lead to the displacement of persons, as well as increase tensions between ethnic groups in regions where ethnic coexistence is a demographic feature (articles 3 and 7 of the Convention).

The Committee recommends that the State party ensure that the system of ethnic federalism serves to protect the rights of all ethnic groups and promote peaceful coexistence amongst them. The Committee further recommends that the State party provide information on the measures taken to combat racial prejudices and intolerance between ethnic groups.

139. While noting article 486 (b) of the new Criminal Code on inciting the public through false rumours, the Committee remains concerned over the lack of information on specific penal provisions implementing article 4 of the Convention in the domestic legislation of the State party.

The Committee recommends that the State party adopt legislation, in the light of its general recommendation No. 15 (1993) on organized violence based on ethnic origin, to ensure the full and adequate implementation of article 4 of the Convention in its domestic legal system and provide, in its periodic report, any relevant information on other measures giving effect to this article.

140. According to information before the Committee, there are between 100,000 and 280,000 internally displaced persons in the State party, most of them due to ethnic conflict. The Committee is concerned about the lack of recognition of the status of some internally displaced persons by State party authorities and about the ongoing discrimination faced by these persons, including limited access to the rights provided in the Convention (article 5 of the Convention).

In light of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Committee recommends that the State party adopt adequate measures in order to ensure the enjoyment by internally displaced persons of their rights under article 5 of the Convention, especially their right to security and their economic, social and cultural rights.

141. The Committee is alarmed at information according to which military and police forces have been systematically targeting certain ethnic groups, in particular the Anuak and the Oromo peoples, and reports of summary executions, rape of women and girls, arbitrary detention, torture, humiliations and destruction of property and crops of members of those communities (articles 5 (b), (d), (e) and (f) and 6 of the Convention).

The Committee urges the State party to put an end to human rights violations perpetrated by military and police forces, especially racially motivated violence targeting the Anuak and Oromo, and recommends that it provide, in its overdue report, information on the measures taken to ensure the right to security for members of all ethnic groups.

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee further recommends that the State party provide detailed information on investigations, prosecutions and convictions for human rights violations, in particular for racially motivated violence perpetrated by the military and police forces (including in the Gambella region in 2003 and 2004), as well as on the reparations provided to the victims of such acts.

142. The Committee is concerned at the programme of voluntary resettlements of rural communities to fertile agricultural lands, in particular when not done in an intraregional context, and at the measures taken to ensure the equal enjoyment of economic, social and cultural rights by those who participate in such programmes (article 5 (b) and (e) of the Convention).

The Committee recommends that the State party adopt all necessary measures to ensure that resettlements occur on a genuinely voluntary basis and that, especially when in a different region, the resettled population is guaranteed non-discriminatory enjoyment of economic, social and cultural rights, in particular regarding adequate infrastructure for an effective improvement in their living conditions.

The Committee further recommends that the State party provide information, in its overdue report, on any initiatives undertaken to resolve disputes concerning land and resource distribution between ethnic groups and the support offered to civil society organizations involved in the peaceful mediation of such conflicts.

143. Notwithstanding the provisions of the constitution and the revised Family Code, the Committee remains concerned at the discrimination faced by women based on gender on the one

hand, and on race, colour, descent, and national and ethnic origin on the other, in particular in relation to inheritance and control over resources, including land, as well as at the persistence of the practice of female genital mutilation (article 5 (b), (c), (d) and (e) of the Convention).

In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party adopt all necessary measures to implement the legal provisions on equality, ensuring that women are not discriminated against on the grounds of their gender and ethnic origin, and provide information in this regard in its overdue report, including on female genital mutilation and on the measures adopted to eradicate this persistent practice.

144. While acknowledging the provisions of article 40 (5) of the constitution, the Committee remains concerned about the consequences for indigenous groups of the establishment of national parks in the State party and their ability to pursue their traditional way of life in such parks (article 5 (c), (d) and (e) of the Convention).

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party provide, in its overdue report, information on the effective participation of indigenous communities in the decisions directly relating to their rights and interests, including their informed consent in the establishment of national parks, and as to how the effective management of those parks is carried out.

The Committee also recommends that the State adopt all measures to guarantee that national parks established on ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those indigenous communities.

145. The Committee is concerned about the situation of children of parents of Eritrean origin, who were deprived of their Ethiopian citizenship in the period 1998-2000, and who have not benefited from the January 2004 directive issued to determine the status of Eritreans living in Ethiopia (article 5 (d) and (e) of the Convention).

The Committee recommends that the State party provide, in its overdue report, detailed information on the situation of those Eritreans who do not benefit from the provisions of the January 2004 directive on the status of Eritreans living in Ethiopia.

146. Bearing in mind that the State party hosts around 100,000 refugees, almost half of whom are children, the Committee is concerned about the enjoyment of their right to education (article 5 (e) of the Convention).

In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State adopt adequate measures ensuring the right of equal access to education and training of the above-mentioned children.

147. The Committee is concerned about the lack of information from the State party on the level of representation of minority ethnic groups in the federal and national parliaments and governments, in the judiciary and in the military and police forces (articles 2 (2) and 5 (c) of the Convention).

The Committee recommends that the State party ensure that ethnic minorities are adequately represented in State institutions and the public administration, including any special measures aimed at achieving such representation in the military and police forces.

148. While noting the existence of a Sustainable Development and Poverty Reduction Programme in the State party, the Committee is concerned about the extreme poverty of a large part of the population, including their access to food and water, in particular by minority ethnic groups living in remote areas (articles 2 (2) and 5 (e) of the Convention).

The Committee recommends that the State party enhance its efforts to reduce poverty and stimulate economic growth and development, and provide information in its overdue report on the results of such efforts, especially regarding minority ethnic groups.

149. The Committee is concerned at the lack of information on adequate measures and programmes to disseminate information about the Convention to the public at large, including schools, as well as on training for members of the judiciary, law enforcement officials, military personnel, teachers, social workers and other public officials on the provisions of the Convention and their application (article 7 of the Convention).

The Committee recommends that the State party provide, in its overdue report, information on the human rights programmes in school curricula as well as on the specific training programmes and courses for members of the judiciary, teachers, social workers and other public officials on the provisions of the Convention and their application. In particular, the Committee recommends that, in the light of its general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights, the State party provide specific training to military and law enforcement officials, to ensure that they respect and protect the human rights of all persons without any discrimination in the performance of their duties.

150. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

151. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level.

152. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and recommends it consider doing so.

153. The Committee urges the State party to resume its dialogue with the Committee and to provide urgently and no later than 1 July 2007, information regarding the concerns mentioned in paragraphs 133 and 134, as well as on the recommendations included in paragraphs 138 and 141 of the present concluding observations.

154. Furthermore, the Committee urges the State party to submit its overdue seventh to fifteenth periodic reports, in a single report, as soon as possible and no later than 31 December 2007.

155. The Committee also recommends that the State party submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

156. The Committee, acknowledging the central role that the African Union plays in addressing the challenges of the continent, recommends that the State party cooperate with the appropriate mechanisms of the African Union, in particular the African Commission on Human and Peoples' Rights, with a view to furthering the common purposes of the Convention and the African human rights instruments towards a resolution of the human rights situation in Ethiopia.

157. The Committee recommends that the State party consult with organizations of civil society, as well as with the Ethiopian Human Rights Commission and the Office of the Ombudsman, in connection with the preparation of the overdue report.

158. The Committee requests the State party to give wide publicity to the Convention, both in English and translated into the national languages of the State party.

INDIA

159. The Committee considered the fifteenth to nineteenth periodic reports of India (CERD/C/IND/19) submitted in one document at its 1796th and 1797th meetings (CERD/C/SR.1796 and 1797), held on 23 and 26 February 2007. At its 1809th meeting (CERD/C/SR.1809), held on 6 March 2007, it adopted the following concluding observations.

A. Introduction

160. The Committee welcomes the report submitted by India and the opportunity thus offered to reengage in a dialogue with the State party. It also welcomes the answers the delegation gave in response to some of the Committee's questions and expresses the hope that the dialogue with the State party will be pursued in a constructive and cooperative spirit.

B. Positive aspects

161. The Committee notes with appreciation the comprehensive constitutional provisions and other legislation of the State party to combat discrimination, including discrimination based on race and caste.

162. The Committee welcomes the special measures adopted by the State party to advance the equal enjoyment of rights by members of scheduled castes and schedules tribes, such as reservation of seats in Union and State legislatures and of posts in the public service.

163. The Committee welcomes the establishment of institutions responsible for the implementation of anti-discrimination legislation such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) and for the monitoring of acts of discrimination and

violence against members of scheduled castes and scheduled tribes, including the Ministry of Social Justice and Empowerment, the Union and State Parliamentary Committees on Social Justice, the Ministry of Tribal Affairs, and the National Commissions on Scheduled Castes and on Scheduled Tribes.

164. The Committee notes with appreciation the declaration of the Indian Prime Minister before the Dalit-Minority International Conference in New Delhi on 27 December 2006 that "the only parallel to the practice of 'Untouchability' was Apartheid in South Africa". Such a declaration underlines the renewed commitment to address the discriminatory practice of "Untouchability".

165. The Committee welcomes the fact that the State party hosts an important number of refugees of different national and ethnic origins, including Tibetan, Sri Lankan and Chakma, as well as Afghan and Myanmar refugees under UNHCR care.

C. Concerns and recommendations

166. The Committee takes note of the State party's position that discrimination based on caste falls outside the scope of article 1 of the Convention. However, after an extensive exchange of views with the State party, the Committee maintains its position expressed in general recommendation No. 29 "that discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights".[1] Therefore, the Committee reaffirms that discrimination based on the ground of caste is fully covered by article 1 of the Convention.

167. The Committee regrets the lack of information in the State party's report on concrete measures taken to implement existing anti-discrimination and affirmative action legislation, as well as on the de facto enjoyment by members of scheduled castes and scheduled and other tribes of the rights guaranteed by the Convention (arts. 2 and 5).

Notwithstanding the above-mentioned legal position of the State party, the Committee invites it to include in its next periodic report detailed information on measures taken to implement anti-discrimination and affirmative action legislation, disaggregated by caste, tribe, gender, State/district and rural/urban population. The State party should also provide disaggregated data on the percentages of the Union, State and district budgets allocated for that purpose and on the effects of such measures on the enjoyment by members of scheduled castes and scheduled and other tribes of the rights guaranteed by the Convention.

168. The Committee notes with concern that the State party does not recognize its tribal peoples as distinct groups entitled to special protection under the Convention (arts. 1 (1) and 2).

The Committee recommends that the State party formally recognize its tribal peoples as distinct groups entitled to special protection under national and international law, including the Convention, and provide information on the criteria used for determining the membership of scheduled and other tribes, as well as on the National Tribal Policy. In this regard, the Committee refers the State party to its general recommendation No. 23.[2]

169. The Committee is concerned that the so-called denotified and nomadic tribes, which were listed for their alleged "criminal tendencies" under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual Offenders Act (1952) (art. 2 (1) (c)).

The Committee recommends that the State party repeal the Habitual Offenders Act and effectively rehabilitate the denotified and nomadic tribes concerned.

170. The Committee notes with concern that the State party has not implemented the recommendations of the Committee to Review the Armed Forces (Special Powers) Act (1958) to repeal the Act, under which members of the armed forces may not be prosecuted unless such prosecution is authorized by the Central Government and have wide powers to search and arrest suspects without a warrant or to use force against persons or property in Manipur and other north-eastern States which are inhabited by tribal peoples (arts. 2 (1) (c), 5 (b), (d) and 6).

The Committee urges the State party to repeal the Armed Forces (Special Powers) Act and to replace it "by a more humane Act", in accordance with the recommendations contained in the 2005 report of the above Review Committee set up by the Ministry of Home Affairs. It also requests the State party to release the report.

171. The Committee notes with concern that, despite the formal abolition of "Untouchability" by article 17 of the Indian Constitution, de facto segregation of Dalits persists, in particular in rural areas, in access to places of worship, housing, hospitals, education, water sources, markets and other public places (arts. 3 and 5).

The Committee urges the State party to intensify its efforts to enforce the Protection of Civil Rights Act (1955), especially in rural areas, including by effectively punishing acts of "Untouchability", to take effective measures against segregation in public schools and residential segregation, and to ensure equal access for Dalits to places of worship, hospitals, water sources and any other places or services intended for use by the general public.

172. The Committee is concerned about reports of arbitrary arrest, torture and extrajudicial killings of members of scheduled castes and scheduled tribes by the police, and about the frequent failure to protect these groups against acts of communal violence (arts. 5 (b) and 6).

The Committee urges the State party to provide effective protection to members of scheduled castes and scheduled and other tribes against acts of discrimination and violence, introduce mandatory training on the application of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) for police, judges and prosecutors and take disciplinary or criminal law measures against police and other law enforcement officers who violate their duty of protection and/or investigation in relation to crimes against scheduled castes and scheduled and other tribes.

173. The Committee is concerned about the alarming number of allegations of acts of sexual violence against Dalit women primarily by men from dominant castes, in particular rape, and about the sexual exploitation of Dalit and tribal women who are being trafficked and forced into prostitution (art. 5 (b)).

The Committee urges the State party to effectively prosecute and punish perpetrators of acts of sexual violence and exploitation of Dalit and tribal women, sanction anyone

preventing or discouraging victims from reporting such incidents, including police and other law enforcement officers, take preventive measures such as police training and public education campaigns on the criminal nature of such acts, and provide legal, medical and psychological assistance, as well as compensation, to victims. The State party should also consider adopting victim-sensitive rules of evidence similar to that of Section 12 of the Protection of Civil Rights Act (1955) and establishing special court chambers and task forces to address these problems.

174. While taking note of the mass influx of refugees in India, the Committee is concerned that the State party has not acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and that it has not yet adopted any specific refugee legislation (art. 5 (b)).

The Committee recommends that the State party consider acceding to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and enact a comprehensive legal framework governing the treatment of refugees.

175. The Committee notes with concern reports that Dalit candidates, especially women, are frequently forcibly prevented from standing for election or, if elected, forced to resign from village councils or other elected bodies or not to exercise their mandate, that many Dalits are not included in electoral rolls or otherwise denied the right to vote, and that public service posts reserved for scheduled castes and scheduled tribes are almost exclusively filled in the lowest category (e.g. sweepers). The Committee is also concerned that scheduled castes and scheduled and other tribes are underrepresented in the Union, State and local governments and legislatures, as well as in the public service (arts. 5 (c) and 2 (2)).

The Committee recommends to the State party to effectively enforce the reservation policy; to ensure the rights of members of scheduled castes and scheduled and other tribes to freely and safely vote and stand for election and to fully exercise their mandate if elected to their reserved seats; to apply the reservation policy to all categories of public service posts, including the highest, and to extend it to the judiciary; to ensure adequate representation of scheduled castes, scheduled and other tribes and ethnic minorities in Union, State and local governments and legislatures; and to provide updated statistical data on such representation in its next periodic report.

176. The Committee is concerned about the persistence of social norms of purity and pollution which de facto preclude marriages between Dalits and non-Dalits; it is also concerned about violence and social sanctions against inter-caste couples and the continuing practices of child marriage and dowry, and *devadasi* whereby mostly Dalit girls are dedicated to temple deities and forced into ritualized prostitution (art. 5 (d) (iv) and 5 (b)).

The Committee urges the State party to effectively enforce the prohibition of child marriage, the Dowry Prohibition Act (1961) and State laws prohibiting the practice of *devadasi*. The State party should punish such acts and acts of discrimination or violence against inter-caste couples and rehabilitate victims. Furthermore, it should conduct training and awareness-raising campaigns to sensitize police, prosecutors, judges, politicians, teachers and the general public as to the criminal nature of such acts.

177. The Committee notes that the State party does not fully implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples. It is also concerned that large scale projects such as the construction of several dams in Manipur and other north-eastern States on territories primarily inhabited by tribal communities, or of the Andaman Trunk Road, are carried out without seeking their prior informed consent. These projects result in the forced resettlement or endanger the traditional lifestyles of the communities concerned (art. 5 (d) (v) and 5 (e)).

The Committee urges the State party to fully respect and implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples, in accordance with ILO Convention No. 107 on Indigenous and Tribal Populations (1957). The State party should seek the prior informed consent of communities affected by the construction of dams in the North-East or similar projects on their traditional lands in any decision-making processes related to such projects, and provide adequate compensation and alternative land and housing to those communities. Furthermore, it should protect tribes such as the *Jarawa* against encroachments on their lands and resources by settlers, poachers, private companies or other third parties and implement the 2002 order of the Indian Supreme Court to close the sections of the Andaman Trunk Road that run through the *Jarawa* reserve.

178. The Committee is concerned about reports that Dalits are often denied access to and evicted from land by dominant castes, especially if it borders land belonging to such castes, and that tribal communities have been evicted from their land under the 1980 Forest Act or in order to allow private mining activities (art. 5 (d) (v) and 5 (e) (i) and (iii)).

The Committee recommends that the State party ensure that Dalits, including Dalit women, have access to adequate and affordable land and that acts of violence against Dalits due to land disputes are punished under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989). The State party should also ensure that tribal communities are not evicted from their lands without seeking their prior informed consent and provision of adequate alternative land and compensation, that bans on leasing tribal lands to third persons or companies are effectively enforced, and that adequate safeguards against the acquisition of tribal lands are included in the Recognition of Forest Rights Act (2006) and other relevant legislation.

179. The Committee notes with concern that Dalits who convert to Islam or to Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programmes, unlike converts who become Buddhists or Sikhs (arts. 5 (d) (vii) and 2 (2)).

The Committee recommends that the State party restore the eligibility for affirmative action benefits of all members of scheduled castes and scheduled tribes having converted to another religion.

180. The Committee is concerned about reports that Dalits were denied equal access to emergency assistance during the post-tsunami relief, while noting that, according to the State party, those allegations merely concern isolated cases (arts. 5 (e) and 2 (1) (a)).

The Committee recommends to the State party to investigate all alleged cases in which Dalits were denied assistance or benefits equal to that received by caste fishermen or cases in which they were otherwise discriminated against during the post-tsunami relief and rehabilitation process and to compensate or retroactively grant such benefits to the victims of such discrimination.

181. The Committee notes with concern that very large numbers of Dalits are forced to work as manual scavengers and child workers and are subject to extremely unhealthy working conditions and exploitative labour arrangements, including debt bondage (art. 5 (e) (i) and (iv)).

The Committee recommends that the State party effectively implement the Minimum Wages Act (1948), the Equal Remuneration Act (1976), the Bonded Labour (System) Abolition Act (1976), the Child Labour (Prohibition and Regulation) Act (1986) and the Employment of Manual Scavangers and Construction of Dry Latrines (Prohibition) Act (1993). The State party should also adopt measures to enhance Dalits' access to the labour market, e.g. by extending the reservation policy to the private sector and issuing job cards under the National Rural Employment Guarantee Scheme to Dalit applicants, and report on the effects of the measures taken on the employment and working conditions of Dalits in its next periodic report.

182. The Committee is concerned about reports that members of scheduled castes and scheduled and other tribes are disproportionately affected by hunger and malnutrition, infant, child and maternal mortality, sexually transmitted diseases, including HIV/AIDS, tuberculosis, diarrhoea, malaria and other water-borne diseases and that health-care facilities are either unavailable in tribal areas or substantially worse than in non-tribal areas (art. 5 (e) (iv)).

The Committee recommends that the State party ensure equal access to ration shops, adequate health-care facilities, reproductive health services, and safe drinking water for members of scheduled castes and scheduled and other tribes and to increase the number of doctors and of functioning and properly equipped primary health centres and health sub-centres in tribal and rural areas.

183. While noting the constitutional guarantee of free and compulsory education for all children up to the age of 14 and the rapid growth of the literacy rate among Dalits, in particular girls, the Committee remains concerned about the high dropout rate among Dalit pupils at the primary and secondary levels, reports of classroom segregation and discrimination against Dalit pupils, teachers and mid-day meal cooks, and the poor infrastructure, equipment, staffing and quality of teaching in public schools attended by Dalit and tribal children (art. 5 (e) (v)).

The Committee recommends that the State party take effective measures to reduce dropout and increase enrolment rates among Dalit children and adolescents at all levels of schooling, e.g. by providing scholarships or other financial subsidies and by sensitizing parents as to the importance of education, combat classroom segregation and discrimination against Dalit pupils and ensure non-discriminatory access to the Mid-Day Meal Scheme, adequate equipment, staffing and quality of teaching in public schools, as well as physical access by Dalit and tribal pupils to schools in dominant caste neighbourhoods and armed conflict areas.

184. The Committee notes with concern allegations that the police frequently fail to properly register and investigate complaints about acts of violence and discrimination against members of scheduled castes and scheduled tribes, the high percentage of acquittals and the low conviction rate in cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), and the alarming backlog of atrocities cases pending in the courts (art. 6).

The Committee urges the State party to ensure that members of scheduled castes and scheduled and other tribes who are victims of acts of violence and discrimination have access to effective remedies and, to that effect, encourage victims and witnesses to report such acts and protect them from acts of retaliation and discrimination; ensure that complaints under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) and other criminal law provisions are properly registered and investigated, perpetrators prosecuted and sentenced and victims compensated and rehabilitated; and establish and make operational special courts trying atrocity cases as well as committees monitoring the implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in all States and districts, as mandated by the Act. In this regard, the State party is invited to include in its next periodic report information on the number and nature of complaints registered, the convictions and sentences imposed on perpetrators, and the remedies and assistance provided to victims of such acts.

185. The Committee notes with concern that caste bias as well as racial and ethnic prejudice and stereotypes are still deeply entrenched in the minds of wide segments of Indian society, particularly in rural areas (art. 7).

The Committee recommends that the State party strengthen its efforts to eradicate the social acceptance of caste-based discrimination and racial and ethnic prejudice, e.g. by intensifying public education and awareness-raising campaigns, incorporating educational objectives of inter-caste tolerance and respect for other ethnicities, as well as instruction on the culture of scheduled castes and scheduled and other tribes, in the National Curriculum Framework, and ensuring adequate media representation of issues concerning scheduled castes, tribes and ethnic minorities, with a view to achieving true social cohesion among all ethnic groups, castes and tribes of India.

186. The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

187. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

188. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and invites it to consider doing so.

189. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting

of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

190. The Committee recommends that the reports of the State party be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly translated into Hindi and, to the extent possible, other official languages of India, and publicized.

191. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

192. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 170, 173, 177 and 184 above, within one year of the adoption of the present conclusions.

193. The Committee recommends that the State party submit its twentieth and twenty-first periodic reports, due on 4 January 2010, in a single report.

ISRAEL

194. The Committee considered the tenth to thirteenth periodic reports of Israel, submitted as one document (CERD/C/471/Add.2), at its 1794th and 1795th meetings (CERD/C/SR.1794 and 1795), held on 22 and 23 February 2007. At its 1810th and 1813th meetings (CERD/C/SR.1810 and 1813), held on 6 and 8 March 2007, it adopted the following concluding observations.

A. Introduction

195. The Committee appreciates the attendance of a large delegation, and welcomes the submission of the report, which contains important statistical data and information in relation to the implementation of the Convention in Israel. The Committee regrets, however, that many of the questions sent in advance to the State party remain unanswered.

196. The Committee regrets that, despite requests made in its previous concluding observations, the report has not provided any information on the Occupied Palestinian Territories, due to the position of the State party that the Convention does not apply to these Territories. It appreciates, however, that the delegation, while maintaining its position, provided responses to some of the questions raised by the Committee on this issue.

197. The Committee notes with satisfaction that numerous non-governmental organizations contributed to the process before the Committee. It is concerned however about the discrepancy of the assessment made by the State party on the one hand, and that made by an overwhelming majority of these organizations on the other hand, of the level of implementation of the Convention by the State party.

198. Noting that the report was more than five years overdue when submitted, the Committee invites the State party to respect the deadline set for the submission of its future reports.

B. Positive aspects

199. The Committee notes with interest the role played by the Supreme Court of Israel in combating racial discrimination, for example in matters of allocation of State land, as demonstrated by its 2000 decision in *Ka'adan v. The Israel Lands Administration*.

200. The Committee notes with satisfaction the domestic legislation implementing article 4 of the Convention, as well as efforts made by the State party to tackle the issue of violence and racism linked to football.

201. The Committee welcomes affirmative action programmes to ensure better representation of minority groups in the civil service and within government-owned corporations, and encourages the State party to enhance its efforts in this direction.

202. The Committee notes with satisfaction that for the first time an Arab Israeli citizen has been appointed to the cabinet.

203. The Committee welcomes the enactment of the Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law (2000).

204. The Committee notes with appreciation that the civil service sector has taken steps to accommodate the different cultural and religious traditions and practices of minority employees at work.

205. The Committee welcomes efforts made by the State party to improve the status of the Arabic language, in particular steps taken to add Arabic to all existing intercity and highway road signs, as well as to municipal signs in municipalities where there exists an Arab minority.

C. Factors and difficulties impeding the implementation of the Convention

206. In the present context of violence, the Committee recognizes the difficulties of the State party in fully implementing the Convention. Guided by the principles of the Convention, the State party should ensure, however, that security measures taken in response to legitimate security concerns are guided by proportionality, and do not discriminate in purpose or in effect against Arab Israeli citizens, or Palestinians in the Occupied Palestinian Territories, and that they are implemented with full respect for human rights as well as relevant principles of international humanitarian law.

207. The Committee reiterates the view that the Israeli settlements in the Occupied Palestinian Territories, in particular the West Bank, including East Jerusalem, are not only illegal under international law but are an obstacle to the enjoyment of human rights by the whole population, without distinction as to national or ethnic origin. Actions that change the demographic composition of the Occupied Palestinian Territories are also of concern as violations of human rights and international humanitarian law.

D. Concerns and recommendations

208. The Committee, bearing in mind the oral clarification provided by the delegation, notes the absence of information on the ethnic plurality of the Jewish population of Israel, particularly in the context of the Law of Return.

The State party is requested to provide information on the ethnic composition of the Jewish population of Israel, in order to facilitate a full understanding of the implementation of the Convention in the State party's jurisdiction.

209. The Committee welcomes the fact that several pieces of legislation prohibit racial discrimination, for example in the field of health, employment, education, and access to products and services, and takes into consideration the information provided by the delegation relating to the jurisprudence of the Supreme Court. The Committee remains concerned however that no general provision for equality and prohibition of racial discrimination has been included in the Basic Law: Human Dignity and Liberty (1992), which serves as Israel's bill of rights (article 2 of the Convention).

The Committee recommends that the State party ensure that the prohibition of racial discrimination and the principle of equality be enacted as general norms of high status in domestic law.

210. The Committee welcomes the statement made by the delegation that the Jewish character of the State party does not allow it to discriminate between its citizens. It also notes the statement that the only significant difference regarding the enjoyment of human rights between Jewish nationals and other citizens exists with regard to determining the right to immigrate to Israel, according to the Law of Return, and that such preference is made for the purpose of developing the national identity of the State party. The Committee is concerned, however, by reports that such preference is accompanied by other privileges, in particular regarding access to land and benefits (articles 1, 2 and 5 of the Convention).

The Committee recommends that the State party ensure that the definition of Israel as a Jewish nation State does not result, in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights. The Committee would welcome receiving more information on how the State party envisages the development of the national identity of all its citizens.

211. The Committee is concerned about the denial of the right of many Palestinians to return and repossess their land in Israel (article 5 (d) (ii) and (v) of the Convention).

The Committee reiterates its view, expressed in its previous concluding observations on this issue, and urges the State party to assure equality in the right to return to one's country and in the possession of property.

212. The Committee regrets that it has not received sufficient information from the State party on the status, mandate and responsibility of the World Zionist Organization, the Jewish Agency and the Jewish National Fund, as well as on their budgets and allocation of funds. It is concerned by information according to which these institutions manage land, housing and services exclusively for the Jewish population (articles 2 and 5 of the Convention).

The Committee urges the State party to ensure that these bodies are bound by the principle of non-discrimination in the exercise of their functions.

213. The Committee notes with concern that the Citizenship and Entry into Israel Law (Temporary Order) of 31 May 2003 suspends the possibility of granting Israeli citizenship and residence permits in Israel, including through family reunification, to residents of the Occupied Palestinian Territories, except in limited and discretionary exceptions. Such measures have a disproportionate impact on Arab Israeli citizens wishing to be reunited with their families in Israel. While noting the State party's legitimate objective of guaranteeing the safety of its citizens, the Committee is concerned that these "temporary" measures have systematically been renewed, and have been expanded to citizens of "enemy States". Such restriction targeting a particular national or ethnic group in general is not compatible with the Convention, in particular the obligation of the State party to guarantee to everyone equality before the law (articles 1, 2 and 5 of the Convention).

The Committee recommends that the State party revoke the Citizenship and Entry into Israel Law (Temporary Order), and reconsider its policy with a view to facilitating family reunification on a non-discriminatory basis. The State party should ensure that restrictions on family reunification are strictly necessary and limited in scope, and are not applied on the basis of nationality, residency or membership of a particular community.

214. The Committee notes with concern that military service provides highly advantageous access to various public services, for example in the fields of housing and education. Such a policy is not compatible with the Convention, bearing in mind that most Arab Israeli citizens do not perform national service (articles 2 and 5 of the Convention).

The Committee recommends that the State party adopt measures to ensure that access to public services is ensured to all without discrimination, whether direct or indirect, based on race, colour, descent, or national or ethnic origin.

215. The Committee notes with deep concern that separate "sectors" are maintained for Jewish and Arab persons, in particular in the areas of housing and education, and that according to some information, such separation results in unequal treatment and funding. The Committee regrets that information provided by the State party on this matter was not sufficiently detailed (articles 3, 5 and 7 of the Convention).

The Committee recommends that the State party assess the extent to which the maintenance of separate Arab and Jewish "sectors" may amount to racial segregation. The State party should develop and implement policies and projects aimed at avoiding separation of communities, in particular in the areas of housing and education. Mixed Arab-Jewish communities and schools should be promoted and strong action taken to promote intercultural education.

216. The Committee welcomes the decisions of the Supreme Court in *Ka'adan v. The Israel Lands Administration* (2000) and *Kibbutz Sde-Nahum et al v. Israel Land Administration et al* (2002), in which it ruled that State land should not be allocated on the basis of any discriminatory criteria or to a specific sector. It notes that the Israel Land Administration, as a result, has adopted new admission criteria for all applicants. It remains concerned, however, that the condition that applicants must be "suitable to a small communal regime" may allow, in

practice, for the exclusion of Arab Israeli citizens from some State-controlled land (articles 2, 3 and 5 (d) and (e) of the Convention).

The Committee recommends that the State party take all measures to ensure that State land is allocated without discrimination, direct or indirect, based on race, colour, descent, or national or ethnic origin. The State party should assess the significance and impact of the social suitability criterion in this regard.

217. The Committee notes the efforts made by the State party to promote development within the Arab sector, in particular through the Multi-year Plan (2001-2004). It remains concerned however that the lower level of education provision for Arab Israeli citizens is a barrier to their access to employment, and that their average income is significantly lower than that of Jewish citizens. It is also concerned by the discrepancies still remaining between the infant mortality rates and life expectancy rates of Jewish and non-Jewish populations, and by the fact that minority women and girl children are often the most disadvantaged (articles 2 and 5 (e) of the Convention).

The Committee recommends that the State party increase its efforts to ensure the equal enjoyment of economic, social and cultural rights by Arab Israeli citizens, in particular their right to work, health and education. The State party should assess the extent to which the alleged discriminatory attitudes of employers against Arabs, scarcity of jobs near Arab communities, and lack of day-care centres in Arab villages are a cause of high unemployment rates among Arabs. Bearing in mind its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee also recommends that the State party pay particular attention to the situation of Arab women in this regard.

218. The Committee expresses concern about the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns. While taking note of the State party's assurances that such planning has been undertaken in consultation with Bedouin representatives, the Committee notes with concern that the State party does not seem to have enquired into possible alternatives to such relocation, and that the lack of basic services provided to the Bedouins may in practice force them to relocate to the planned towns (articles 2 and 5 (d) and (e) of the Convention).

The Committee recommends that the State party enquire into possible alternatives to the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns, in particular through the recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them. It recommends that the State party enhance its efforts to consult with the inhabitants of the villages and notes that it should in any case obtain the free and informed consent of affected communities prior to such relocation.

219. The Committee notes with satisfaction that the laws of the State party prohibit the withholding of passports of migrant workers, prohibit employment agencies from collecting fees from migrant workers, and allow migrant workers to change employers without losing their work permit. It regrets however that it has not received sufficient information on the practical implementation of these laws (article 5 (e) (i) of the Convention).

The State party should make all efforts to ensure the full implementation of these laws, and provide the Committee with detailed information, including statistical data, on this matter. The Committee also draws the attention of the State party to general recommendation No. 30 (2005) on discrimination against non-citizens and encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

220. The Committee expresses concern about information, according to which the psychometric examinations used to test aptitudes, ability and personality, indirectly discriminate against Arabs in accessing higher education, an allegation that the State party has not commented upon as requested (articles 2 and 5 (e) (v) of the Convention).

The State party should ensure that access to higher education is ensured for all without discrimination, whether direct or indirect, based on race, colour, descent, or national or ethnic origin.

221. The Committee expresses concern at information that several laws establish Jewish cultural institutions but that none create similar centres for Arab Israeli citizens, and that the same level of protection is not offered to Jewish and non-Jewish holy sites. The Committee regrets that the State party has not commented on these allegations as requested (articles 2, 5 (d) (vii) and (e) (vi) and 7 of the Convention).

The State party should ensure that laws and programmes be equally devoted to the promotion of cultural institutions and the protection of holy sites of both Jewish and other religious communities.

222. The Committee regrets that the State party has not provided detailed information as requested on the number of complaints, investigations, indictments and prosecutions in relation to acts criminalized under articles 133 and 144 A-E of the Penal Code, as well as on their outcomes. It is concerned by information, according to which the Attorney-General has adopted a restrained policy in relation to prosecutions against politicians, government officials and other public figures for hate speech against the Arab minority, an allegation that the State party cannot justify by mere reference to the right to freedom of expression (article 4 of the Convention).

The State party should increase its efforts to prevent racially motivated offences and hate speech, and to ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas. It recommends that the State party take resolute action to counter any tendency to target, stigmatize, stereotype or profile people on the basis of race, colour, descent, and national or ethnic origin, especially by politicians. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also requests the State party to remind public prosecutors of the general importance of prosecuting racist acts, including all offences committed with racist motives.

223. The Committee notes with concern information according to which a high number of complaints filed by Arab Israeli citizens against law enforcement officers are not properly and

effectively investigated and that the Police Investigations Unit (Mahash) of the Ministry of Justice lacks independence. It regrets that the State party has not commented on this allegation as requested, nor provided any information as to whether the persons responsible for the killings of 14 Israeli citizens in October 2000 have been prosecuted and sentenced (articles 4, 5 (a) and (b), and 6 of the Convention).

Bearing in mind general recommendation No. 31 (2005) of the Committee, the State party should guarantee the right of every person within its jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, or acts committed with racist motives, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered. The State party should ensure that complaints are recorded immediately, and that investigations are pursued without delay and in an effective, independent and impartial manner.

224. The Committee notes that the State party has neither established a specialized agency on racial discrimination nor a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex) (articles 2 and 6 of the Convention).

The Committee recommends that the State party consider the establishment of a national mechanism for redress of racial discrimination either as a specialized agency on racial discrimination or a national human rights institution in accordance with the Paris Principles.

The Occupied Palestinian Territories

225. The Committee reiterates its concern at the position of the State party to the effect that the Convention does not apply in the Occupied Palestinian Territories and the Golan Heights. Such a position cannot be sustained under the letter and spirit of the Convention, or under international law, as also affirmed by the International Court of Justice. The Committee is concerned at the State party's assertion that it can legitimately distinguish between Israelis and Palestinians in the Occupied Palestinian Territories on the basis of citizenship. It reiterates that the Israeli settlements are illegal under international law.

The Committee recommends that the State party review its approach and interpret its obligations under the Convention in good faith, in accordance with the ordinary meaning to be given to its terms in their context, and in the light of its object and purpose. The Committee also recommends that the State party ensures that Palestinians enjoy full rights under the Convention without discrimination based on citizenship and national origin.

226. The Committee, while noting that the Supreme Court has recommended that the course of the wall be changed to prevent disproportionate harm to specific Palestinian communities, is concerned that the State party has chosen to disregard the 2004 advisory opinion of the International Court of Justice on the legal consequences of the construction of the wall in the Occupied Palestinian Territories. The Committee is of the opinion that the wall and its associated regime raise serious concerns under the Convention, since they gravely infringe a number of

human rights of Palestinians residing in the territory occupied by Israel. These infringements cannot be justified by military exigencies or by the requirements of national security or public order (articles 2, 3 and 5 of the Convention).

The Committee recommends that the State party cease the construction of the wall in the Occupied Palestinian Territories, including in and around East Jerusalem, dismantle the structure therein situated and make reparation for all damage caused by the construction of the wall. The Committee also recommends that the State party take action to give full effect to the 2004 advisory opinion of the International Court of Justice on the legal consequences of the construction of the wall in the Occupied Palestinian Territories.

227. The Committee is deeply concerned that the severe restrictions on the freedom of movement in the Occupied Palestinian Territories, targeting a particular national or ethnic group, especially through the wall, checkpoints, restricted roads and permit system, have created hardship and have had a highly detrimental impact on the enjoyment of human rights by Palestinians, in particular their rights to freedom of movement, family life, work, education and health. It is also concerned that the Order on Movement and Travel (Restrictions on Travel in an Israeli Vehicle) (Judea and Samaria), of 19 November 2006, which bans Israelis from transporting Palestinians in their vehicles in the West Bank, except in limited circumstances, has been suspended but not cancelled (articles 2, 3 and 5 of the Convention).

The State party should review these measures to ensure that restrictions on freedom of movement are not systematic but only of temporary and exceptional nature, are not applied in a discriminatory manner, and do not lead to segregation of communities. The State party should ensure that Palestinians enjoy their human rights, in particular their rights to freedom of movement, family life, work, education and health.

228. The Committee notes with concern the application in the Occupied Palestinian Territories of different laws, policies and practices applied to Palestinians on the one hand, and to Israelis on the other hand. It is concerned, in particular, by information about unequal distribution of water resources to the detriment of Palestinians, about the disproportionate targeting of Palestinians in house demolitions and about the application of different criminal laws leading to prolonged detention and harsher punishments for Palestinians than for Israelis for the same offences (articles 2, 3 and 5 of the Convention).

The State party should ensure equal access to water resources to all without any discrimination. The Committee also reiterates its call for a halt to the demolition of Arab properties, particularly in East Jerusalem, and for respect for property rights irrespective of the ethnic or national origin of the owner. Although different legal regimes may apply to Israeli citizens living in the Occupied Palestinian Territories and Palestinians, the State party should ensure that the same crime is judged equally, not taking into consideration the citizenship of the perpetrator.

229. The Committee is concerned about the excavations beneath and around Al-Aqsa Mosque and the possible irreparable damage these may cause to the mosque (articles 5 (d) (vii) and (e) (vi), and 7 of the Convention).

While stressing that the Al-Aqsa Mosque is an important cultural and religious site for people living in the Occupied Palestinian Territories, the Committee urges the State

party to ensure that the excavations in no way endanger the mosque and impede access to it.

230. The Committee is concerned by the persistence of violence perpetrated by Jewish settlers, in particular in the Hebron area (articles 4 and 5 of the Convention).

The Committee recommends that the State party increase its efforts to protect Palestinians against such violence. The State party should ensure that such incidents are investigated in a prompt, transparent and independent manner, the perpetrators are prosecuted and sentenced, and that avenues for redress are offered to the victims.

231. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111. In this connection, the Committee cites General Assembly resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was made by the Assembly in resolution 58/160 of 22 December 2003.

232. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and urges it to consider doing so.

233. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in Hebrew and Arabic.

234. The Committee recommends that the State party consult widely with civil society organizations working in the field of combating racial discrimination, in connection with the preparation of the next periodic report.

235. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

236. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 213, 215, 218 and 227 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure. The Committee is aware that issues raised under paragraph 22 may not be resolved within one year, but wishes to receive comments by the State party on the concerns expressed by the Committee, as well as information on first steps taken to implement the recommendations of the Committee.

237. The Committee recommends that the State party submit its fourteenth, fifteenth and sixteenth periodic reports in a single document, due on 2 February 2010, and that the report be an update document and address all points raised in the present concluding observations.

LIECHTENSTEIN

238. The Committee considered the second and third periodic reports of Liechtenstein, submitted in one document (CERD/C/LIE/3), at its 1800th and 1801st meetings (CERD/C/SR.1800 and 1801), held on 27 and 28 February 2007. At its 1813th meeting (CERD/C/SR.1813), held on 8 March 2007, it adopted the following concluding observations.

A. Introduction

239. The Committee welcomes the report submitted by the State party which is in conformity with the reporting guidelines. The Committee also expresses appreciation for the open dialogue held with the delegation and for the comprehensive and frank answers given orally and in writing to the list of issues and to the wide range of questions raised by members. It appreciates the opportunity thus provided to pursue constructive dialogue with the State party.

B. Positive aspects

240. The Committee welcomes the adoption by the State party of a National Action Plan against Racism, in February 2003.

241. The Committee welcomes the establishment, in June 2002, of the Working Group for a National Action Plan against Racism (renamed the Working Group against Racism, Anti-Semitism, and Xenophobia in August 2005).

242. The Committee notes with appreciation the establishment of the Office of Equal Opportunity and its accompanying Commission in February 2005.

243. The Committee welcomes the statement of the State party indicating its plans to establish the Office of Children's Ombudsman.

244. The Committee notes with satisfaction the adoption, in November 2004, of the revised Ordinance on the Movement of Persons, in which the integration of foreigners was legally enshrined as a State objective, and the establishment, in November 2006, of the Task Force on Integration within the Office of Equal Opportunity.

245. The Committee notes with appreciation the establishment by the State party, in 2004, of the Working Group on the Integration of Muslims and various measures undertaken by the Working Group.

246. The Committee notes with satisfaction the establishment, in 2001, of the Independent Commission of Historians, to study the role of Liechtenstein in the Second World War, and welcomes the publication, in 2005, of its final report and the conclusions.

247. The Committee welcomes the establishment, in February 2007, of the Violence Protection Commission, aimed at developing a strategy against right-wing extremism.

248. The Committee welcomes the civil society initiative that has resulted in the adoption of a Parliamentary petition to amend the Criminal Code so as to enable the criminalization of the display of symbols with racist connotations.

249. The Committee notes with satisfaction the appointment by the State party of a project group aimed at improving the compilation of statistics and the evaluation of data relating to racism and discrimination.

250. The Committee welcomes the participation by the State party in: the "No Exclusion" campaign of the Swiss Commission against Racism, in 2005; the "all-different - all equal" campaign, in 2006; and the "European Year of Equal Opportunities for All" initiative, in 2007.

251. The Committee notes with appreciation that the State party made the optional declaration provided for in article 14 of the Convention in March 2004.

C. Concerns and recommendations

252. The Committee takes note of the concern of the State party that in light of the small size of the country, individual privacy may be endangered when disaggregating statistical data on the basis of ethnicity or national origin. Given the significant proportion of non-citizens in the population of the State party (34 per cent), the Committee is however concerned about the lack of socio-economic data disaggregated by nationality and ethnic group that would facilitate the evaluation of existing policies and programmes. The Committee also notes the absence of available data on the political representation of ethnic groups in the State party, "for reasons of data protection" (arts. 2 and 5 (c)).

The Committee recommends, in accordance with paragraph 8 of the reporting guidelines, that the State party take the necessary measures to collect disaggregated statistical data that would allow for an assessment of the socio-economic status of various ethnic groups in the population. Furthermore, the Committee requests that the State party include, in its next periodic report, statistical information on the representation of the various ethnic groups in public bodies and institutions.

253. The Committee, while welcoming the establishment of the Commission for Equal Opportunities (CEO), notes that the Commission does not fully meet the criteria required by the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134, annex), and regrets that the State party does not envisage establishing a national human rights institution in line with the Paris Principles (art. 2).

The Committee encourages the State party to consider the establishment of an independent national human rights institution, in accordance with the Paris Principles which would, inter alia, contribute to monitoring and evaluating progress in the implementation of the Convention.

254. The Committee notes with concern that, pursuant to the Act on Facilitated Naturalization (2000), Liechtenstein citizenship is granted on the basis of 30 years of permanent residence, which, in the Committee's view, is excessively lengthy. The Committee is also concerned that the fast-track procedure, which requires five years of permanent residence and a favourable outcome of popular vote in the local municipality in which the applicant is resident, may be discriminatory due to the absence of objective criteria against which such decisions are made (art. 2).

In light of its general recommendation 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party consider amending the Act on Facilitated Naturalization (2000) with a view to reducing the required period of residence in the naturalization procedure, and ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship. The Committee also urges the State party to take the necessary measures to ensure that outcomes of municipal popular votes in relation to the naturalization applications of non-citizens are subject to legal review and that the right to appeal against decisions is guaranteed.

255. While acknowledging the State party's efforts to address right-wing extremist and anti-Semitic crimes, including the establishment of the Violence Protection Commission, the Committee is concerned about the rise in xenophobic and right-wing tendencies among youths and that a core group of Liechtenstein right-wing extremists are becoming increasingly networked with groups abroad (art. 2).

The Committee encourages the State party to continue to monitor all tendencies which may give rise to racist and xenophobic behaviour, and recommends that it undertake a sociological study of the phenomenon of right-wing activities in order to acquire a more accurate picture of the problem and its root causes. The Committee requests the State party to report back on the results of the study, as well as measures taken and progress made.

256. While noting that article 283 of the Criminal Code provides for criminalization of membership in organizations that promote or incite racial discrimination, the Committee is concerned about the absence of a penal provision in the State party that prohibits racist organizations in line with the requirements of article 4 (b) of the Convention (art. 4 (b)).

The Committee recommends that the State party adopt specific legislation in accordance with article 4 (b) of the Convention and underlines the preventive role of such legislation.

257. The Committee notes with concern that pursuant to the Ordinance on the Movement of Persons, the right to family reunification is dependent on the financial capacity of the applicant, which, in the Committee's view, amounts to indirect discrimination against minority groups who tend to suffer from socio-economic marginalization, and in particular, women belonging to minority groups. The Committee also notes with regret that due to the lack of available statistical data on rejected applications for family reunification, disaggregated by ethnicity or nationality, the State party is unable to assess the extent to which indirect discrimination has occurred as a result of the restrictive conditions of the current legislation regarding family reunification (art. 5 (d) (iv)).

The Committee recommends that the State party review its legislation to ensure that the right to family reunification is guaranteed to every person without discrimination based on national or ethnic origin. The Committee also urges the State party to assess, by, inter alia, collection of statistical data, the extent to which the financial conditions for spousal reunification may amount to indirect discrimination against minority groups who tend to suffer from socio-economic marginalization, and report back to the Committee in this regard in its next periodic report.

258. While the Committee welcomes the efforts made by the State party to support the learning of the German language by migrant children and their mothers so as to address the relatively poor educational performance of children with foreign mother tongues, the Committee notes with concern that the language disadvantage may not be the sole reason for the difficulties experienced by these children in the school system. In this connection, the Committee notes the finding by the State party that "the more foreign the parents, the greater their need for support structures" (written replies to the list of issues, page 15) (arts. 5 (e) (v) and 7).

In addition to the intensive language classes to support the learning of the German language by migrant children and their parents, the Committee recommends that the State party consider the adoption of additional measures to address the particular learning disadvantage faced by these children, by, inter alia, ensuring that child support and other social services take into consideration the particular needs of parents of foreign origin, and training of teachers in culturally sensitive teaching methods.

259. The Committee recommends that the reports of the State party be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized.

260. The Committee recommends to the State party that it continue to take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

261. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

262. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 254 and 255 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

263. The Committee recommends that the State party submit its fourth periodic report jointly with its fifth periodic report, due on 22 March 2009, as a single comprehensive report on the implementation of the Convention, and that it address all points raised in the present concluding observations.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

264. The Committee considered the fourth to seventh periodic reports of The former Yugoslav Republic of Macedonia - due in 1998, 2000, 2002 and 2004, respectively, and submitted in a single document (CERD/C/MKD/7) - at its 1798th and 1799th meetings (CERD/C/SR.1798 and 1799), held on 26 and 27 February 2007. At its 1813th meeting (CERD/C/SR.1813), held on 8 March 2007, it adopted the following concluding observations.

A. Introduction

265. The Committee welcomes the fourth to seventh periodic reports of The former Yugoslav Republic of Macedonia, submitted in a single document, and the opportunity thus offered to resume an open and constructive dialogue with the State party. The Committee expresses appreciation for the attendance of a high-level delegation, as well as for the comprehensive and thorough answers to the list of issues and the wide range of questions raised by members.

B. Positive aspects

266. The Committee welcomes the declaration made by the State party in December 1999 under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals.

267. The Committee takes note with interest of the comprehensive reforms carried out in the State party pursuant to the signing of the Ohrid Framework Agreement, with particular regard to the adoption of amendments V to XVII to the Constitution, creating a comprehensive legal framework for the promotion and protection of the rights of persons belonging to ethnic minorities.

268. The Committee notes with satisfaction that the Ohrid Framework Agreement, which is now being implemented, aims at reducing the level of inter-ethnic tensions and at promoting tolerance and understanding for the culture and history of different ethnic groups within the State party.

269. The Committee notes with satisfaction that the Convention is incorporated into the domestic law of the State party and can be directly applied in national courts.

270. The Committee wishes to commend the State party for the adoption of the National Strategy on Roma, aimed at promoting empowerment and the further integration of Roma in the socio-economic sphere, and for its participation in the regional initiative Decade of Roma Inclusion 2005-2015. In particular, the Committee welcomes the efforts made to involve Roma communities in the development and implementation of policies and programmes that affect them.

271. The Committee welcomes the adoption in January 2007 of a strategy on equitable representation of members of ethnic communities in the State administration and public enterprises.

C. Concerns and recommendations

272. The Committee notes with concern that, according to reports received, the Code of Ethics of Journalists, which aims at prohibiting and punishing hate speech crimes committed through the media, has not been applied in such a manner as to sanction journalists violating its principles (article 4 (a) of the Convention).

The Committee recommends that the State party take effective steps to ensure the effective implementation of the Code of Ethics of Journalists, as well as the application of criminal sanctions provided for in article 319 of the Criminal Code against those

journalists who promote discrimination, racism and inter-ethnic tensions and hostility through the media.

273. The Committee is concerned that, in accordance with article 9 of the Constitution, only citizens are equal before the law and entitled to exercise their freedoms and rights without discrimination of any kind as to sex, race, colour, national and social origin, political and religious beliefs, property and social status (article 5 of the Convention).

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens, and recommends that the State party review its legislation in order to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in the Convention to the extent recognized under international law.

274. While expressing appreciation for the State party's historical openness in receiving a large number of individuals fleeing from neighbouring countries at war, the Committee notes with concern that many applications for asylum or refugees status have been rejected by the competent authorities of the State party due to alleged shortcomings in the application of refugee status determination mechanisms (article 5 of the Convention).

The Committee recommends that the Law on Asylum and Temporary Protection be reviewed so as to guarantee a fair and efficient application of procedures for the determination of refugee status based on the merits of the individual claims submitted.

275. Taking into consideration its statement on racial discrimination and measures to combat terrorism of 8 March 2002 (A/57/18), the Committee regrets the rendition under suspicion of terrorism of Mr. Khaled al-Masri, a German citizen of Lebanese origin, to a third country for purposes of detention and interrogation.

The Committee draws the attention of the State party to its general statement on racial discrimination and measures to combat terrorism, adopted at its sixtieth session on 8 March 2002 (A/57/18), in which the Committee demands that States and international organizations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin.

276. While welcoming the efforts made by the State party to implement the legislation concerning the use of "non-majority" languages in civil, criminal and administrative proceedings, the Committee is concerned that, according to reports received, such legislation is not systematically applied by courts and other institutions (article 5 (a) of the Convention).

The Committee recommends that the State party ensure the effective implementation of the legislation concerning the use of "non-majority" languages in judicial proceedings, inter alia by ensuring that judges, lawyers and the other parties of judicial proceedings are fully aware of these provisions. The Committee also recommends that the State party recruit additional professional translators and interpreters in all "non-majority" languages used locally.

277. The Committee is deeply concerned about the difficulties that some Roma experience in obtaining personal documents, including birth certificates, identity cards, passports and other

documents related to the provision of health insurance and social security benefits (art. 5 (e) of the Convention).

The Committee, in the light of its general recommendation No. 27 (2000) on discrimination against Roma, urges the State party to take immediate steps to remove all administrative obstacles that currently prevent Roma from obtaining personal documents that are necessary for the enjoyment of economic, social and cultural rights, such as employment, housing, health care, social security and education.

278. The Committee notes that the report submitted by the State party does not provide sufficient information on the implementation of the new Law on Labour Relations, and in particular on the measures adopted to combat discrimination in the workplace and to ensure the equal effective enjoyment of labour rights for all, including women, Roma and members of other ethnic minorities (article 5 (e) (i) and (ii) of the Convention).

The Committee urges the State party to submit detailed information on the legislative, judicial, administrative and other measures adopted to give effect to the new Law on Labour Relations with regard to the various ethnic groups living in its territory.

279. While acknowledging the efforts undertaken by the State party under the Roma Strategy and Decade to improve the situation of Roma living in informal settlements, the Committee remains concerned about the housing situation of Roma, especially with regard to the lack of basic infrastructure and to their right to security of tenure (article 5 (e) (iii) of the Convention).

The Committee recommends that the State party intensify its efforts in implementing the National Action Plan and the Operational Plan on Housing. In particular, the Committee encourages the State party to finalize as a matter of priority the adoption of the law on legalization, the development and implementation of urban plans and the construction of new apartment blocks for social housing in Šuto Orizari. The Committee urges the State party to ensure that appropriate funds be allocated for the realization of these projects. The Committee further urges the State party to ensure that Roma representatives and non-governmental organizations continue to be involved in the design and implementation of strategies and policies directly affecting them.

280. The Committee notes with concern that despite the efforts made by the State party to increase the participation of ethnic Albanian and Turkish pupils in the secondary and higher levels of education, the dropout rate from the school system of children belonging to these communities remains high (article 5 (e) (v) of the Convention).

The Committee recommends that the State party intensify its efforts to reduce the high dropout rate in the secondary and higher levels of education among ethnic Albanian and Turkish children. In this regard, the Committee encourages the State party to improve the quality of teaching in Albanian and Turkish schools, inter alia by ensuring the availability of textbooks in minority languages and adequate training of teachers instructing in these languages. In order to facilitate access to higher education, the Committee further recommends that the State party take steps to ensure that ethnic Albanian and Turkish children have access to Macedonian language classes.

281. While acknowledging the efforts undertaken by the State party under the Roma Strategy and Decade to improve the access to education of Roma children, the Committee remains concerned about the low attendance and high dropout rate of Roma children from primary school (article 5 (e) (v) of the Convention).

The Committee recommends that the State party intensify its efforts to increase the levels of education of members of Roma communities, inter alia by:

(a) Taking immediate steps to eliminate negative prejudices and stereotypes regarding Roma and their contribution to society;

(b) Providing financial assistance to assist poorer families in covering the costs associated with education;

(c) Ensuring, to the extent possible, adequate opportunities for Roma children to receive instruction in their native language;

(d) Ensuring that Roma children have access to Macedonian language classes in order to prepare them for entry into the school system;

(e) Organizing special training for teachers to increase their knowledge of Roma culture and traditions and to raise their sensitivity to the needs of Roma children;

(f) Facilitating the recruitment of Roma teachers.

282. The Committee notes with concern that criminal law provisions punishing acts of racial discrimination, such as articles 137, 138, 319 and 417 of the Criminal Code, are seldom invoked in national courts, allegedly due to a general lack of knowledge of these provisions and lack of confidence in the justice system (articles 4 (a) and 6 of the Convention).

Drawing the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party ensure the effective implementation of criminal law provisions punishing acts of racial discrimination, in particular by providing specific training for those working within the criminal justice system - police officers, lawyers, prosecutors and judges - in order to increase their awareness of the relevant provisions of the Criminal Code (such as articles 137, 138, 319 and 417), as well as about the Convention. The Committee also recommends that the State party undertake information campaigns to raise awareness among the public of the mechanisms and procedures provided for in national legislation in the field of racism and discrimination.

283. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111. In this regard, the Committee refers to resolution 59/176 of 20 December 2004, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

284. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report specific information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

285. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized.

286. In connection with the preparation of the next periodic report, the Committee recommends that the State party consult widely with civil society organizations working in the field of combating racial discrimination.

287. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 278, 279 and 289 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

288. The Committee recommends that the State party submit its eighth, ninth and tenth periodic reports in a single document, due on 17 September 2010, and that the report be comprehensive and address all points raised in the present concluding observations.

COSTA RICA

289. The Committee considered the seventeenth and eighteenth periodic reports of Costa Rica - due on 4 January 2004 and submitted in a single document (CERD/C/CRI/18), at its 1819th and 1820th meetings (CERD/C/SR.1819 and 1820), held on 30 and 31 July 2007. At its 1841st meeting (CERD/C/SR.1841), held on 15 August 2007, it adopted the following concluding observations.

A. Introduction

290. The Committee welcomes the State party's periodic report, which is in line with its reporting guidelines. The Committee also welcomes the frank, open and constructive dialogue with the State party's delegation and wishes to thank the delegation for its cooperative approach and for the written replies and the detailed additional information provided orally, in response to the Committee's many questions.

B. Positive aspects

291. The Committee notes with satisfaction the decisions taken by the Constitutional Chamber of the Supreme Court in constitutional challenges and *amparo* applications invoking the Convention.

292. The Committee welcomes the establishment of the Office of the Attorney for Indigenous Affairs in the Public Prosecutor's Office and the formation of a corps of indigenous-language translators attached to the courts.

293. The Committee notes with satisfaction the "Equality in the exercise of the right to vote" programme, the publication of the leaflet entitled "Protocol for an electoral process accessible to

indigenous communities", which refers to Convention rights, and the "How to vote" poster, which has been translated into Bribri, Maleku and Cabécar.

294. The Committee welcomes the State party's ratification, in 2002, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

295. The Committee welcomes the forthcoming establishment in Costa Rica of a national mechanism for follow-up to the recommendations of the treaty bodies.

C. Concerns and recommendations

296. The Committee notes the shortcomings of the ninth population census, taken in 2000, which failed to permit a precise determination of the characteristics of the different ethnic groups in the Costa Rican population, including those resulting from a mixing of cultures. The Committee recalls that information on the composition of the population is necessary to evaluate the implementation of the Convention and monitor the policies affecting minorities and indigenous peoples.

The Committee recommends that the State party continue to improve its census methodology in order to reflect more fully the ethnic complexity of the Costa Rican society, bearing in mind the principle of self-identification, in accordance with its general recommendation No. 4 (1973) and paragraphs 10 and 11 of the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1).

297. The Committee notes with concern that, despite the recommendation contained in its concluding observations of 2002, the Autonomous Development of Indigenous Peoples Bill has not been adopted owing to legislative obstacles. The Committee is concerned to learn that the bill may once again be shelved.

The Committee again urges the State party to remove without delay the legislative obstacles preventing the adoption of the Autonomous Development of Indigenous Peoples Bill (art. 2).

298. The Committee notes the reinstatement of the National Commission on Indigenous Affairs (CONAI), with a new executive board comprising seven members who are representatives of the indigenous communities. The Committee is nevertheless concerned at information received to the effect that CONAI failed to represent the interests of the indigenous peoples and that, as the State party recognizes, it has in the past not fulfilled its functions and responsibilities.

The Committee recommends that the State party ensure that the mandate and operation of CONAI are consistent with the Convention and that this body acts to defend and protect the rights of the indigenous peoples (art. 2).

299. The Committee notes with concern that racial discrimination continues to be viewed in Costa Rica as a minor infraction punishable by a fine, despite the fact that the Committee recommended in 2002 that Costa Rica's criminal legislation should be amended to make the penalty commensurate with the gravity of the offence.

The Committee again urges the State party to amend its criminal legislation so as to bring it into line with the Convention. The State party should define each element of the criminal behaviour listed in the relevant paragraphs of article 4 of the Convention as an offence and increase the penalty in proportion to the gravity of the offence.

300. While taking note of the explanation provided by the State party regarding the difficulty of access to the indigenous territories, the Committee is concerned at the fact that only 7.6 per cent of indigenous people in those territories have their basic needs met, and that this problem might result in indigenous people being obliged to leave their ancestral lands in search of better opportunities. The Committee is particularly concerned at the situation in the canton of Talamanca and in the banana plantations; it recalls that discrimination is not always an effect of a deliberate policy and that the State party has an obligation to rectify situations of de facto discrimination.

The Committee urges the State party to take the necessary steps to remove the economic, social and geographical barriers that prevent it from guaranteeing access to basic services in the indigenous territories, so that indigenous people do not find themselves compelled to leave their ancestral lands. The Committee invites the State party to pay particular attention to the canton of Talamanca and the banana plantations (art. 5).

301. The Committee notes with concern the low wages of the indigenous population compared with the rest of the population, and their problems of access to education and health.

The Committee urges the State party to step up its efforts to improve the indigenous peoples' enjoyment of economic and social rights, and in particular to take steps to ensure equal pay for indigenous people and other sectors of the population, and access to education and health. To this end, the Committee invites the State party to take into account its general recommendation No. 23 on indigenous peoples (art. 5 (e) (i), (iii), (iv) and (v)).

302. The Committee is alarmed at the fact that child mortality rates in the cantons with large indigenous populations are still very much higher than the national average.

The State party should make strenuous efforts to combat child mortality in the indigenous communities (art. 5 (iv)).

303. While noting that domestic legislation protects indigenous peoples' right to land tenure, the Committee is concerned that this right is not guaranteed in practice. The Committee shares the State party's concern at the trend towards the concentration of indigenous land in the hands of non-indigenous settlers.

The Committee urges the State party to strengthen its efforts to guarantee the indigenous peoples' right to land tenure. The State party should take the necessary steps to implement Constitutional Chamber decision No. 3468-02 ordering the delimitation of the lands of the Rey Curré, Térraba and Boruca communities and the recovery of indigenous lands lost through improper transfer (art. 5 (d) (v)).

304. While noting the efforts made by the State party on immigration, the Committee is concerned at the precarious situation of migrant workers, the majority of them Nicaraguan, and

particularly that of the women, who, having little education, work mainly as domestic workers and are thus vulnerable to abuse and discrimination.

The Committee urges the State party to step up its efforts to improve the situation of migrants in Costa Rica, and particularly that of women migrants. The State party should ensure that Act No. 8487 amending the Migration and Aliens Act fully guarantees migrants' rights. The Committee draws the State party's attention to its general recommendation No. 30 on non-citizens, and invites it to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 5).

305. The Committee is concerned at the lack of a gender policy specifically for indigenous women that would enable the State party to effectively protect their rights.

The Committee recommends that the State party take the necessary steps to combat double discrimination, on the basis of gender and ethnicity, and invites it to adopt a national gender plan for indigenous women that will allow it to effectively coordinate policies to protect their rights. The indigenous peoples should participate in the elaboration of such a plan. To that end, the Committee draws the State party's attention to its general recommendation No. 25 on gender-related dimensions of racial discrimination (art. 5 (e) (i) and (v)).

306. The Committee is concerned to note that despite the high rate of school enrolment among Afro-Costa Ricans, the unemployment rate for young Afro-Costa Ricans is above the national average.

The Committee invites the State party to carry out a study to determine the causes of this problem, and to take the necessary measures, including legislative measures, to put an end to discrimination in employment and all discriminatory practices in the labour market, and to adopt further measures to reduce unemployment among Afro-Costa Ricans in particular (art. 5 (c) (i)).

307. The Committee notes with concern that the list of Colombian refugees was shared by the Costa Rican authorities with the Colombian authorities.

The Committee suggests that the State party should take the necessary steps to ensure that refugees are protected and that safeguards are in place to shield personal data from the authorities of the country of origin (art. 5 (b)).

308. The Committee notes with concern the disappearance of two indigenous languages, Chorotega and Huetar.

The Committee invites the State party to take the necessary measures to preserve the indigenous peoples' cultural heritage, including their languages (art. 7).

309. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection the Committee refers to resolution 57/194 of 18 December 2002, in which the General Assembly strongly urged States parties to accelerate their domestic ratification

procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. The General Assembly repeated this exhortation in resolution 58/160 of 22 December 2003.

310. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level, and in particular on the preparation and implementation of a national action plan.

311. The Committee recommends that the State party's reports be made available to the public at the time of their submission and that the Committee's observations on these reports be similarly publicized, including in indigenous languages.

312. Pursuant to article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the Committee's recommendations contained in paragraphs 297, 300 and 304 above, within one year of the adoption of the present conclusions.

313. The Committee invites the State party to submit with its next periodic report a common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1); and, in preparing its report, to consult with civil society organizations working to combat racial discrimination.

314. The Committee recommends that the State party submit its nineteenth, twentieth and twenty-first periodic reports in a single document, due on 4 January 2010, and that the report provide an update on the issues raised during consideration of the current reports and address all points raised in the present concluding observations.

DEMOCRATIC REPUBLIC OF THE CONGO

315. The Committee considered the eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports of the Democratic Republic of the Congo, submitted in a single document (CERD/C/COD/15), at its 1827th and 1828th meetings (CERD/C/SR.1827 and 1828), held on 6 and 7 August 2007. At its 1844th meeting (CERD/C/SR.1844), held on 17 August 2007, it adopted the following concluding observations.

A. Introduction

316. The Committee welcomes the report submitted by the State party and commends the honesty with which it has recognized certain situations that have had a serious impact on the Democratic Republic of the Congo. The Committee regrets, however, that human rights NGOs were not involved in the preparation of the report.

317. The Committee appreciates the opportunity to resume its dialogue with the State party after a long hiatus. It welcomes the large, high-level delegation, to which it extends its thanks for the supplementary information provided orally and in writing.

318. The Committee takes note of the delegation's announcement that a core document has been drafted and will be forwarded shortly. It invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

B. Positive aspects

319. The Committee welcomes the promulgation of the 18 February 2006 Constitution, which reflects the desire of the Democratic Republic of the Congo to ensure the prevalence of the rule of law and its commitment to meeting its international human rights obligations.

320. The Committee notes with satisfaction the State party's signature in 2006 of the Pact on Security, Stability and Development in the Great Lakes Region.

321. The Committee commends the ratification by the Democratic Republic of the Congo of the Rome Statute of the International Criminal Court and the measures taken to implement the recommendations of the conference on peace in Ituri. It welcomes the fact that, after having requested the establishment of a special criminal court to try war crimes and crimes against humanity committed in the Democratic Republic of the Congo, the State party seized the International Criminal Court of those crimes.

322. The Committee notes with satisfaction the establishment of a technical inter-ministerial committee responsible for drafting reports to the treaty bodies on the implementation of international instruments to which the State is a party.

C. Factors and difficulties impeding the implementation of the Convention

323. The Committee recognizes and is deeply disturbed at the State party's present frail and vulnerable condition, as reflected in the fragility of the peace, within the country as well as on its borders, which hinders it from preventing violations of human rights in general and of the rights contained in the Convention in particular. The Committee is aware of the serious economic, administrative and social challenges facing the State party.

D. Concerns and recommendations

324. While noting the State party's intention to conduct a scientific census in 2009, the Committee remains concerned at the fact that the last census in the Democratic Republic of the Congo was conducted in 1970, and that as a result the information provided by the State party on the ethnic and linguistic make-up of its population, including indigenous peoples, refugees and displaced persons, is not comprehensive. The Committee recalls that information on demographic characteristics enables both the Committee and the State party to better assess the implementation of the Convention at the national level.

(a) The Committee recommends that the State party should include the information yielded in the 2009 census in its next report and encourages it to ensure that the census form contains relevant questions that will make it possible to obtain a clear picture of the ethnic and linguistic make-up of the population, including the indigenous peoples. The Committee draws the attention of the State party to the

guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1).

(b) The Committee invites the State party to submit data on refugees and displaced persons in order to enable it to assess the extent, distribution and impact of their movements.

325. The Committee regrets that the National Human Rights Observatory ceased to exist in accordance with the Transitional Constitution and notes that the State party has not yet set up an analogous independent body to promote and monitor the enjoyment of human rights, particularly in areas relating to the prohibition of racial discrimination and the promotion of tolerance among ethnic groups.

The Committee encourages the State party to create an independent national human rights institution in line with the Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (General Assembly resolution 48/134) (arts. 2, 6, 7).

326. The Committee notes with concern that, while the State party does not deny the existence of ethnic conflicts in the Democratic Republic of the Congo, there is no definition of racial discrimination in domestic law that reflects the definition given in article 1 of the Convention.

The Committee recommends that the State party take the necessary legislative measures to adopt in domestic law a definition of racial discrimination that is fully consistent with article 1 of the Convention.

327. The Committee notes with concern that one of the candidates in the last provincial election campaign in Katanga in October 2006 made racist comments about other candidates and that, although the High Authority for the Media banned him from making statements to the media, no judicial proceedings were taken against him.

The Committee recommends that the State party take appropriate measures to effectively counter all attempts, and particularly attempts by political leaders, to single out, stigmatize or stereotype individuals because of their race, colour, descent or national or ethnic origin. It should also ensure that criminal proceedings and penalties are instituted against those who engage in incitement to racial or tribal hatred. The Committee further recommends that Ordinance-law No. 25-131 of 25 March 1960, on the suppression of manifestations of racism or religious intolerance, the Decree of 13 June 1960, on racial discrimination in shops and other public places, and Ordinance-law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, should be revised in order to make them more effective and bring them into line with the Convention (art. 4 (a)).

328. The Committee takes note that, according to the State party's Constitution, the State party's aim of building a nation based on the principle of equality for all is to be pursued with safeguards for ethnic and cultural diversity. It notes with regret, on the other hand, the State party's reluctance to acknowledge the existence of indigenous peoples in its territory. It also regrets that it has received no clarification of the contradiction between article 51 of the Constitution, which establishes a duty to ensure the protection and advancement of vulnerable

groups and all minorities, and the delegation's repeated statements to the effect that minorities are not recognized by the State party.

The Committee wishes to remind the State party that the principle of non-discrimination requires it to take account of the cultural characteristics of ethnic groups. The Committee strongly urges the State party to respect and protect the existence and cultural identity of all the ethnic groups living in its territory. It further invites the State party to review its position on indigenous peoples and minorities, and in that context to take into account the way in which such groups perceive and define themselves. The Committee recalls in this regard general recommendation No. 8 (1990), concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and general recommendation No. 23 (1997) on the rights of indigenous peoples (arts. 2 and 5).

329. While welcoming the fact that according to article 15 of the Constitution all forms of sexual violence, including those with intent to destroy a people, constitute criminal offences, the Committee remains appalled by the situation of Congolese women, who continue to be the victims of sexual violence as a result of inter-ethnic conflicts.

The Committee urges the State party to take steps to protect the victims of sexual violence and to undertake to prosecute the perpetrators of such acts. The penalties imposed should be proportional to the seriousness of the offences and an information campaign concerning the criminal nature of such acts should be conducted among the public and the armed forces (arts. 2 and 5).

330. The Committee notes with concern the information received about the de facto segregation in Kinshasa, where Luba Congolese and Swahili-speakers are discriminated against and have difficulty finding housing.

The Committee requests the State party to define a strategy and take immediate and effective measures to prevent de facto segregation. The Committee draws the State party's attention to its general recommendation No. 19 (1995) on racial segregation and apartheid (arts. 3 and 5 (e) (iii)).

331. While welcoming the adoption of the Act of 12 November 2004, granting the Banyarwanda Congolese nationality, the Committee is concerned to note that in practice Congolese nationality is particularly difficult to acquire by members of this group. The Committee also notes that, according to article 10 of the Constitution and article 14 of the 2004 Act, Congolese nationality is one and exclusive.

The Committee invites the State party to ensure that the application of the above provisions do not give rise to discrimination in the enjoyment of the right to nationality by members of certain ethnic groups residing within its territory (art. 5 (d) (iii)).

332. The Committee notes with concern that the rights of the Pygmies (Bambuti, Batwa and Bacwa) to own, exploit, control and use their lands, their resources and their communal territories are not guaranteed and that concessions are granted on the lands and territories of indigenous peoples without prior consultation.

The Committee recommends that the State party take urgent and adequate measures to protect the rights of the Pygmies to land and: (a) make provision for the forest rights of indigenous peoples in domestic legislation; (b) register the ancestral lands of the Pygmies in the land registry; (c) proclaim a new moratorium on forest lands; (d) take the interests of the Pygmies and environmental conservation needs into account in matters of land use; (e) provide domestic remedies in the event that the rights of indigenous peoples are violated; and (f) ensure that article 4 of Ordinance-law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, is not used to ban associations engaged in defending the rights of indigenous peoples. In addition, the Committee invites the State party to take account of its general recommendation No. 23 on indigenous peoples (art. 5).

333. The Committee remains concerned that Pygmies are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market. The Committee is particularly concerned at reports that Pygmies are sometimes subjected to forced labour.

The Committee encourages the State party to intensify its efforts to improve the indigenous populations' enjoyment of economic, social and cultural rights and invites it in particular to take measures to guarantee their rights to work, decent working conditions and education and health (art. 5).

334. The Committee regrets that, as reported by the State party, the Congolese courts have practically no case law on discrimination due to a lack of complaints.

The Committee requests the State party to include in its next periodic report statistical data regarding prosecutions initiated and sentences handed down for offences related to racial discrimination, to which the relevant provisions of existing domestic law have been applied. It wishes to remind the State party that the lack of complaints or court action by the victims of racial discrimination may be chiefly due to the absence of relevant specific legislation, unawareness of available remedies or the authorities' unwillingness to prosecute. It requests the State party to ensure that domestic law includes appropriate provisions and inform the public of all legal remedies available with regard to racial discrimination (art. 6).

335. The Committee notes with concern that, as recognized by the State party, the Convention and other texts and laws concerning racial discrimination have not been sufficiently publicized in the Democratic Republic of the Congo.

The Committee invites the State party to integrate the Convention in programmes in schools and in courses, in particular for judges and prosecutors, staff of the armed forces, police, prison personnel, security forces and the media (art. 7).

336. The Committee is concerned at the persistence of tensions between the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups.

The Committee invites the State party to take steps to enable the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups to live in harmony. It also invites it to promote their cultural identities and preserve their languages (art. 7).

337. The Committee recommends that the State party should take account of the relevant paragraphs of the Durban Declaration and Programme of Action when incorporating the Convention in the domestic legal system, in particular articles 2 and 7, and provide information in its next periodic report on any plans and other measures it may have adopted in follow-up to the Durban Declaration and Programme of Action at the national level.

338. The Committee notes the State party's intention to make the optional declaration under article 14 of the Convention and encourages it to do so as soon as possible.

339. The Committee recommends that the State party should ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and approved by the General Assembly in resolution 47/111. In this respect the Committee recalls resolution 59/176 of 20 December 2004, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

340. The Committee recommends that the State party make available its periodic reports to the public as soon as they are submitted, and likewise the Committee's concluding observations, in the official and national languages and, if possible, the main minority languages.

341. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information, not later than 31 August 2008, on its follow-up to the recommendations contained in paragraphs 329, 332 and 333 in the course of the year following the adoption of these concluding observations.

342. The Committee recommends that the State party should submit its sixteenth, seventeenth and eighteenth periodic reports in a single document on 21 May 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1), and covering all the points raised in these concluding observations.

INDONESIA

343. The Committee considered the initial to third periodic reports of Indonesia, submitted in one document (CERD/C/IDN/3), at its 1831st and 1832nd meetings (CERD/C/SR.1831 and 1832), held on 8 and 9 August 2007. At its 1844th meeting (CERD/C/SR.1844), held on 17 August 2007, it adopted the following concluding observations.

A. Introduction

344. The Committee welcomes the initial report submitted by Indonesia and the initiation of a dialogue with the State party. It welcomes the efforts made by the State party to comply with the reporting guidelines, in particular the submission of information relating to difficulties encountered by the State party in implementing the Convention. Noting that the report was almost six years overdue when submitted, the Committee invites the State party to respect the deadline set for the submission of its future reports.

345. The Committee appreciates the attendance of a large delegation, composed of representatives of various governmental institutions concerned, and the efforts made to provide

detailed responses to issues raised, in writing, and to the wide range of questions asked by Committee members.

346. The Committee appreciates the participation of Komnas-HAM, the Indonesian National Commission on Human Rights, in the dialogue with the State party and the oral presentation made by their representatives, independent of the State party's delegation, during the consideration of the initial report.

347. The Committee appreciates the contribution of numerous Indonesian non-governmental organizations, which enhanced the quality of the dialogue with the State party.

B. Positive aspects

348. The Committee notes with satisfaction that the State party has ratified the Convention without any reservation.

349. The Committee appreciates the steps taken by the State party to strengthen its legal framework for the protection and promotion of human rights, in particular the adoption of Act No. 39 of 1999 on Human Rights, and the ratification of the two International Covenants on human rights in 2006.

350. The Committee welcomes the fact that the State party, in accordance with its Second National Plan of Action on Human Rights 2004-2009, has embarked on a process of harmonizing its domestic laws with international human rights instruments, including the Convention.

351. The Committee notes with appreciation that Komnas-HAM has established a working committee on the evaluation of laws and regulations, the recommendations of which are currently being considered by the State party.

352. The Committee notes with satisfaction the enactment of Law No. 24 of 2003 on the establishment of the Constitutional Court, enabling individuals to seek the review of the constitutionality of any act, including on matters relating to discrimination.

353. The Committee welcomes the adoption of Law No. 12 of 2006 on Citizenship, which marks a substantial improvement in addressing citizenship matters and eliminates discriminatory rules based on ethnic, gender and marital status.

354. The Committee appreciates that the Presidential Decree No. 26 of 1998 banned the use of the terms "*pribumi*" (natives) and "*non-pribumi*" (non-natives), the latter being used to designate Indonesians of foreign origin, in particular Chinese origin. It also welcomes Presidential Decree No. 6 of 2000, under which the practice of religions, beliefs and traditions followed by Indonesians of Chinese origin no longer requires a special permit.

355. The Committee welcomes the fact that the State party has pledged to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and encourages it do so in a timely manner.

C. Concerns and recommendations

356. The Committee notes that the Convention is not self-executing in Indonesian law. While appreciating efforts undertaken to harmonize national legislation with the Convention, and noting that a draft law on the elimination of racial and ethnic discrimination is under consideration, the Committee regrets that it has not received sufficient information on the extent to which the Convention has been incorporated into domestic law (art. 2).

The Committee encourages the State party to continue the review of its laws and regulations in order to ensure their full compliance with the Convention. It also encourages the State party to adopt a comprehensive law on the elimination of racial discrimination, taking into consideration all elements of the definition of racial discrimination provided in article 1 of the Convention, and guaranteeing the right of everyone not to be discriminated against in the enjoyment of all rights enumerated in article 5 of the Convention. The Committee also wishes to receive more detailed information on measures adopted to ensure that regional laws and regulations also comply with the Convention.

357. The Committee notes that the State party recognizes the existence of indigenous peoples on its territory, while using several terms to designate them. It is concerned, however, that under domestic law these peoples are recognized "as long as they remain in existence", without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples (arts. 2 and 5).

The Committee draws the attention of the State party to its general recommendation No. 8 (1990), and recommends the State party to respect the way in which indigenous peoples perceive and define themselves. It encourages the State party to take into consideration the definitions of indigenous and tribal peoples as set out in ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples, and to envisage ratifying that instrument.

358. The Committee welcomes the acknowledgement by the State party that it is a multi-ethnic, multicultural, multireligious, and multilingual country, as well as its commitment to achieve "unity in diversity" and respect of human rights for all on an equal basis. The Committee is concerned, however, that in practice the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development (arts. 2 and 5).

The State party should amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples, in accordance with the Committee's general recommendation No. 23 (1997) on indigenous peoples.

The State party should recognize and respect indigenous culture, history, language and way of life as an enrichment of the State's cultural identity and provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.

359. The Committee notes with concern the plan to establish oil palm plantations over some 850 kilometres along the Indonesia-Malaysia border in Kalimantan as part of the Kalimantan Border Oil Palm Mega-project, and the threat this constitutes to the rights of indigenous peoples to own their lands and enjoy their culture. It notes with deep concern reports according to which a high number of conflicts arise each year throughout Indonesia between local communities and palm oil companies. The Committee is concerned that references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to effectively guarantee their rights (arts. 2 and 5).

The Committee, while noting that land, water and natural resources shall be controlled by the State party and exploited for the greatest benefit of the people under Indonesian law, recalls that such a principle must be exercised consistently with the rights of indigenous peoples. The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands. While noting that the Kalimantan Border Oil Palm Mega-project is being subjected to further studies, the Committee recommends that the State party secure the possession and ownership rights of local communities before proceeding further with this plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in it.

360. The Committee notes with concern that although it has been abolished, the transmigration programme has long-standing effects, as exemplified by the conflict that took place between the Dayak and the Madura ethnic groups in Palangkaraya, Central Kalimantan. The Committee also notes with concern the challenges faced by the State party due to the increase in the number of internally displaced persons, resulting not only from natural disasters but also from conflicts, and the cultural misunderstandings that have arisen between communities (arts. 2 and 5).

The Committee strongly recommends that the State party increase its efforts to prevent the resurgence of ethnic conflicts on its territory. It should assess the adverse impact of the transmigration programme, in particular on the rights of local communities, and promote mutual understanding between communities, as well as mutual knowledge and respect for their histories, traditions and languages. It should ensure that violent acts are duly investigated, prosecuted and sentenced. The Committee also encourages the State party to prepare a set of guiding principles for internally displaced persons with the aim of preventing racial discrimination, as envisaged by the State party. It suggests in this regard that the State party take into consideration the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

361. The Committee notes the information provided by the State party that non-citizens have limited civil and political rights, but that these limitations are applied in accordance with the Convention and the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens (arts. 2 and 5).

The Committee recommends that the State party include more detailed information on the rights of non-citizens in its next periodic report. The Committee encourages the State party to envisage ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

362. The Committee notes with satisfaction that Presidential Instruction No. 56 of 1996 abolished SBKRI (Proof of Indonesian Citizenship) for citizens of Chinese origin and other citizens of foreign descent. It remains concerned, however, at the insufficient level of implementation of that Instruction. In particular, it notes with concern that, as is acknowledged by the State party, banks continue to require SBKRI despite Presidential Instruction No. 26 of 1998 specifically prohibiting them to do so (arts. 2 and 5).

The Committee recommends that the State party strengthen its efforts to ensure the practical implementation of the abolition of SBKRI in all regions, and effectively prohibit its use by public institutions as well as private entities such as banks. The State party should adopt programmes to raise awareness about the prohibition of SBKRI and assist individuals who have been required to produce SBKRI in obtaining remedy.

363. While noting the statement made by the delegation that there are no "recognized" or "non-recognized" religions in Indonesia, the Committee expresses concern at the distinction made between Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism, which are often referred to in legislation, and other religions and beliefs. The Committee is concerned at the adverse impact of such a distinction on the rights to freedom of thought, conscience and religion of persons belonging to ethnic groups and indigenous peoples. It notes with particular concern that under Law No. 23 of 2006 on Civic Administration, individuals are required to mention their faith on legal documents such as identity cards and birth certificates, and that those wishing either to leave the column blank or to register under one of the "non-recognized" religions reportedly face discrimination and harassment. The Committee also notes with concern that men and women of different religions face great difficulties in officially registering their marriages, and that their children are not provided with birth certificates, as acknowledged by the State party (arts. 2 and 5).

The Committee recommends that the State party treat equally all religions and beliefs and ensure the enjoyment of freedom of thought, conscience and religion for ethnic minorities and indigenous peoples. Noting that the State party is considering removing the mention of religion on identification cards in order to be in line with the objectives of the Convention, the Committee strongly recommends it to do so in a timely manner, and to extend such a policy to all legal documents. The Committee also recommends the adoption of legislation allowing individuals to contract a civil marriage if they so wish.

364. The Committee welcomes efforts made towards the decentralization of power and consolidation of regional autonomy. It regrets, however, that it has not received sufficient information on the status of implementation of the Papua Special Autonomy Law No. 21 of 2001, and expresses concern about information according to which Papuans continue to experience great poverty (arts. 2 and 5).

The Committee recommends that the State party provide information on the implementation of the Papua Special Autonomy Law No. 21 of 2001, as well as on measures adopted to ensure the enjoyment by Papuans of their human rights without any discrimination.

365. The Committee notes that no discrimination-related cases have been brought before the courts of the State party. It notes with concern the view expressed in the report of the State party

that there is no racial discrimination in Indonesia, direct or indirect, since domestic laws guarantee the elimination of racial discrimination. The Committee notes that this statement is in contradiction with other parts of the report, which acknowledge difficulties in the implementation of the Convention, as well as efforts towards the harmonization of laws with the Convention (arts. 4 and 6).

The Committee draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recalls that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive. The State party should inquire whether this situation is the result of inadequate information provided to victims concerning their rights, their fear of social censure or reprisals, their fear of the cost and complexity of the judicial process, a lack of trust in the police and judicial authorities, or the insufficient level of awareness by the authorities of offences involving racism. The State party should take, in particular on the basis of such a review, all necessary measures to ensure that victims of racial discrimination have access to an effective remedy.

366. The Committee notes with concern that the violations of human rights which were committed during the riots of May 1998 still remain unpunished. It is concerned at reports according to which Indonesians of Chinese descent were specifically targeted, and at the contradictory information provided by the State party in its report and its written replies in this respect. The Committee is further concerned at the conclusion reached by Komnas-HAM that gross human rights violations had been committed. It is further concerned that Komnas-HAM's recommendation that an ad hoc human rights tribunal be established has not been implemented yet, following the Attorney-General's position that the investigations remained incomplete (arts. 4 and 6).

The Committee strongly recommends that the State party take all measures to ensure that acts of racial discrimination committed during the riots of May 1998 are duly prosecuted and punished.

367. The Committee notes with concern that Komnas-HAM has encountered difficulties in the discharge of its mandate, due in particular to the refusal of the military to comply with its requests to submit evidence. It also notes that Law No. 39 of 1999 does not contain any provision ensuring legal immunity for its members, and that the status and mandate of the secretariat of the Commission are currently set forth in a Presidential Decree, which jeopardizes its independence and autonomy.

The Committee recommends that the State party reinforce the independence of Komnas-HAM, in line with the Paris Principles, and guarantee the legislative immunity of its members and staff in the exercise of their duties. The State party should also strengthen the Commission's mandate, in particular its monitoring functions and investigation powers, and ensure its participation in the follow-up and implementation of the present concluding observations.

368. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, in particular as regards articles 2 to 7 of the Convention. The Committee

also urges the State party to include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at national level.

369. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111. In this connection, the Committee cites General Assembly resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was made by the General Assembly in its resolution 58/160 of 22 December 2003.

370. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites it to consider doing so.

371. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the Indonesian language.

372. The Committee recommends that the State party consult widely with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

373. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 359, 362 and 367 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

374. The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

KYRGYZSTAN

375. The Committee considered the second to fourth periodic reports of Kyrgyzstan, due on 4 October 2000, 2002 and 2004, respectively, and submitted in a single document on 18 May 2006 (CERD/C/KGZ/4), at its 1823rd and 1824th meetings (CERD/C/SR.1823 and 1824), held on 2 and 3 August 2007. At its 1843rd meeting (CERD/C/SR.1843), held on 16 August 2007, it adopted the following concluding observations.

A. Introduction

376. The Committee welcomes the periodic reports submitted by Kyrgyzstan, and the opportunity thus offered to resume an open and constructive dialogue with the State party. The Committee expresses appreciation for the answers provided orally by the delegation to the list of issues and to the wide range of questions raised by members.

B. Positive aspects

377. The Committee notes with satisfaction that the Convention is incorporated into the domestic law of the State party and can be directly applied, as appropriate, in national courts.

378. The Committee also notes with satisfaction that the new Constitution adopted in December 2006 prohibits any type of discrimination on the grounds of ethnic origin, sex, race, nationality, language, religious belief or other conditions or circumstances of a personal or social nature.

379. The Committee welcomes the ratification by the State party of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2002; the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography, in 2003; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2004.

C. Concerns and recommendations

380. Notwithstanding the assurances provided by the State party concerning the direct applicability of article 1 of the Convention pursuant to the provision of article 12, paragraph 3, of the Constitution, the Committee notes the absence of a definition of racial discrimination in the law of the State party (art. 1).

The Committee recommends the State party to bring its internal law in line with the Convention by including a definition of racial discrimination in keeping with that contained in article 1 of the Convention.

381. The Committee regrets that the report submitted by the State party does not contain sufficient information on the practical implementation of the Convention (arts. 2, 4, 5, 6 and 7).

The Committee requests the State party to prepare its next periodic report in accordance with the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1) and to include in it information on the progress made, and obstacles encountered, in giving effect to the provisions of the Convention.

382. While taking note of the explanations provided by the State party that in practice non-citizens enjoy most of the rights and freedoms set out in the Constitution on an equal basis with citizens, the Committee is concerned that only citizens are entitled to exercise the rights provided for in Chapter II, Section II, of the Constitution (art. 5).

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on non-citizens, and recommends that the State party take the necessary measures in order to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in the Convention to the extent recognized under international law.

383. While noting the explanation provided by the State party, the Committee notes with concern that according to information presented to it, competent authorities of the State party

allegedly deny refugee status or asylum to individuals belonging to certain ethnic or national minorities, including ethnic Uighurs, Uzbeks and Chechens, and fail to adequately protect the rights of such individuals in accordance with the Convention relating to the Status of Refugees and the national legislation of Kyrgyzstan. The Committee also expresses its deep concern with regard to allegations of forcible return of ethnic Uighurs and Uzbeks to their countries of origin pursuant to multilateral agreements and bilateral agreements concluded with neighbouring countries (art. 5 (b)).

The Committee urges the State party to provide data on the number and outcome of requests for asylum or refugee status presented since the entry into force of the Refugee Act in 2002, disaggregated by country of origin and, where relevant, grounds for rejection. Bearing in mind its general recommendation No. 30 (2004) on non-citizens, the Committee urges the State party to ensure that its asylum procedures do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin. The Committee further recommends that the State party ensure that measures to combat terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and that the State party respect the principle of non-refoulement.

384. The Committee regrets that the State party has not provided sufficient information on the measures taken following the clashes that took place in February 2006 between Kyrgyz and Dungan communities living in Iskra (arts. 5 (b) and 7).

The Committee recommends to the State party, on the basis of the findings of the Commission established to investigate the clashes between Kyrgyz and Dungan communities living in Iskra, that those responsible be brought to justice, that compensation be provided to the families which were forced to leave and that measures be adopted to promote dialogue and understanding between the Dunga and Kyrgyz communities.

385. The Committee notes with concern that despite the efforts made by the State party, persons belonging to ethnic and national minorities, in particular persons of Russian and Uzbek origin, continue to be underrepresented in Parliament, Government and civil service. The Committee also notes that according to information received, officials belonging to ethnic and national minorities encounter obstacles preventing or limiting their access to high-ranking positions, including their lack of proficiency in Kyrgyz language (art. 5 (c)).

The Committee recommends that the State party take effective measures to ensure better representation of ethnic and national minorities in Parliament as well as in Government and in the public administration, by eliminating obstacles preventing their appointment or restricting their promotion. In particular, the Committee encourages the State party to ensure the availability of high quality and free of charge Kyrgyz language courses for applicants to civil service positions belonging to minorities.

386. The Committee regrets that neither the report submitted by the State party nor the replies provided by it to the list of issues included sufficient information on measures adopted to ensure the practical enjoyment by persons belonging to ethnic and national minorities of their economic, social and cultural rights (art. 5 (e)).

The Committee reiterates its request that the State party provide detailed information on measures adopted to ensure the practical enjoyment by persons belonging to ethnic and national minorities of the rights listed in article 5 (e) of the Convention, in particular the right to work, including the right to equal opportunities of promotion and career development, the right to housing and the right to education.

387. The Committee notes with concern that criminal law provisions punishing acts of racial discrimination, such as articles 134, 299 and 373 of the Criminal Code, are seldom invoked in national courts. The Committee also notes that although the Convention forms part of the domestic law and is directly applicable in the courts of the State party, there are no court decisions which contain references to, or confirm the direct applicability of its provisions (art. 6).

The Committee requests that the State party include in its next periodic report detailed information on complaints lodged (including those submitted to the Office of the Ombudsman and to the National Human Rights Commission) and prosecutions launched, as well as on penalties imposed, in cases of offences which relate to racial discrimination. The Committee reminds the State party that the absence of complaints may be an indication of a lack of awareness on the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. In this regard, the Committee recommends that the State party provide specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors and judges, and to undertake information campaigns to raise awareness among the public about the mechanisms and procedures provided for in national legislation in the field of racism and discrimination.

388. The Committee notes with concern that according to reports received, curricula and textbooks for primary and secondary schools do not adequately reflect the multi-ethnic nature of the State party, and do not provide sufficient information on the history and culture of the different national and ethnic groups living in its territory (art. 7).

The Committee recommends that the State party include in curricula and textbooks for primary and secondary schools information about the history and culture of the different national and ethnic groups living in its territory, and encourage and support the publication and distribution of books and other printed materials, as well as the broadcasting of television and radio programmes about their history and culture. The Committee also recommends that the State party ensure the participation of national and ethnic minorities in the elaboration of such materials and programmes.

389. The Committee is concerned that although the texts of international human rights treaties are translated into the language of the State party as well as into other languages spoken in the State party, information about the Convention and its provisions has not been brought to the attention of government officials and the public in general (art. 7).

The Committee recommends that the State party organize public awareness and education programmes on the Convention and its provisions, and step up its efforts to make government officials and the public in general aware of the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.

390. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to resolution 59/176 of 20 December 2004, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

391. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites the State party to consider doing so.

392. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report specific information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

393. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the State party's official languages as well as in the main minority languages spoken in Kyrgyzstan.

394. The Committee invites the State party to revise its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

395. The Committee recommends that, in connection with the preparation of the next periodic report, the State party consult widely with civil society organizations working in the area of combating racial discrimination.

396. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 383 and 384 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

397. The Committee recommends that the State party submit its fifth, sixth and seventh periodic reports in a single document, due on 4 October 2010, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1).

MOZAMBIQUE

398. The Committee considered the second to twelfth periodic reports of Mozambique, submitted in one document (CERD/C/MOZ/12), at its 1825th and 1826th meetings (CERD/C/SR.1825 and 1826), held on 3 and 6 August 2007. At its 1843rd meeting (CERD/C/SR.1843), held on 16 August 2007, it adopted the following concluding observations.

A. Introduction

399. The Committee welcomes the report submitted by the State party as well as the additional oral information provided by the high-level delegation. However, the Committee regrets that the report does not contain sufficient information on the measures taken to give effect to the provisions of the Convention, and encourages the State party to follow the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1).

400. The Committee expresses its appreciation for the opportunity to resume its dialogue with Mozambique and appreciates the constructive and frank dialogue with the high-ranking delegation from the State party.

401. Noting that the report was presented after a long delay, the Committee invites the State party to respect the deadline set for the submission of its next periodic report to the Committee.

B. Factors and difficulties impeding the implementation of the Convention

402. The Committee acknowledges that a long period of conflicts and unrest has hindered the full implementation of the Convention by the State party.

C. Positive aspects

403. The Committee acknowledges the efforts of the State party to build a society in which all groups live in harmony, irrespective of their national and ethnic origin, religion and language.

404. The Committee expresses its satisfaction at the adoption of the Constitution of 2004, enshrining, inter alia, the principle of equality of all citizens, irrespective of their colour, race, sex, ethnic origin, birthplace and religion.

405. The Committee acknowledges with appreciation the ratification of international human rights instruments such as the International Covenant on Civil and Political Rights in 1993, the Convention on the Rights of the Child in 1994, the Convention on the Elimination of All Forms of Discrimination against Women in 1997 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1999.

406. The Committee also acknowledges with appreciation the language policy of the State party, which includes the use of local languages, together with the official language, in the curricula of primary schools as well as the promotion of national languages and cultures, as prescribed in the Constitution.

407. The Committee expresses its satisfaction at the fact that Mozambique resettled over 1.7 million of its returning refugees and several millions of internally displaced persons.

D. Specific concerns and recommendations

408. While acknowledging the integration policy of the State party, the Committee notes that the lack of statistical information on the composition of its population prevents a precise

assessment of the extent to which all persons on its territory enjoy human rights without discrimination on grounds of race, colour, descent, national or ethnic origin (art. 1).

Noting that a new census of the population is currently taking place, the Committee recommends that the State party endeavour to provide a general evaluation of the ethnic and linguistic composition of its population and in this connection draws the attention of the State party to paragraphs 10 and 11 of the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1), as well as to its general recommendation No. 24 (1999) on article 1 of the Convention. Furthermore, the Committee recommends that the State party also provide data on refugees and asylum-seekers, including those living in urban areas.

409. While noting that article 35 of the Constitution ensures that all citizens are equal before the law, the Committee is concerned about the lack of legislation on racial discrimination (arts. 1 and 2).

The Committee recommends that the State party adopt specific legislation on racial discrimination implementing the provisions of the Convention, including a legal definition of racial discrimination, in line with article 1 of the Convention.

410. While welcoming the provision of article 118 of the Constitution on traditional authorities and considering the importance of customary law, including with regard to land ownership, the Committee notes the lack of information on the status of those institutions vis-à-vis national law and judicial institutions (art. 2 (c)).

The Committee recommends that the State party provide detailed information on its customary law and on the role of community leaders ("*régulos*") in extrajudicial conflict resolution, including any measures adopted to ensure that the actions of traditional authorities, and customary laws, are in conformity with the provisions of the Convention.

411. While acknowledging that the Criminal Code is currently under revision and that the Association Act of 1991 prohibits incitement to racial discrimination, the Committee is concerned at the lack of specific penal provisions implementing article 4 of the Convention in domestic legislation (art. 4).

In light of its general recommendation No. 15 (1993), the Committee recommends that the State party adopt legislation to ensure the full and adequate implementation of article 4 of the Convention in its legal system.

412. While noting the existence of the Institute for Legal Assistance and Aid, the Committee remains concerned about the obstacles regarding access to justice faced by ethnic groups disadvantaged on account of their location, language or poverty (arts. 5 (a) and 6).

In the light of its general recommendation No. 31 (2006) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take the necessary measures to expand the provision of legal assistance and aid to the whole population on its territory and to improve the capacity and efficiency of the judicial system in order to

ensure access to justice for all members of ethnic groups disadvantaged on account of their location, language or poverty.

413. While noting that the State party has ratified the Convention against Transnational Organized Crime in 2006 and that a bill on human trafficking is being prepared, the Committee notes the absence of any specific policy to prevent and combat human trafficking, bearing in mind that victims are often women and children belonging to the most disadvantaged groups, including non-citizens (art. 5 (b) and (e)).

The Committee recommends that the State party adopt legislation and other effective measures in order to adequately prevent, combat and punish human trafficking, especially with regard to members of disadvantaged ethnic groups, including non-citizens.

414. While noting the State party's efforts to enhance the legal framework and administrative procedures regarding asylum-seekers and refugees, the Committee remains concerned about the equal enjoyment of economic, social and cultural rights by non-citizens as well as by the apparent difficulties encountered by long-term residents wishing to acquire citizenship through naturalization (art. 5 (d) and (e)).

In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee encourages the State party to continue its efforts towards improving procedures to determine refugee status, so as to ensure that non-citizens enjoy economic, social and cultural rights without discrimination and to facilitate the naturalization procedure for long-term residents.

415. While acknowledging the efforts of the State party regarding health care and the improvement of living conditions, the Committee remains concerned at the very high rate of HIV/AIDS amongst persons belonging to the most vulnerable groups, including non-citizens and persons without any identification documents, as well as their access to health care (art. 5 (e)).

The Committee recommends that the State party strengthen its programmes aimed at providing universal access to health care, with particular attention to members of vulnerable groups, including non-citizens and persons without any identification documents, and encourages the State party to take further measures to prevent and combat HIV/AIDS, malaria and cholera.

416. While taking note of the "Plan of Action for the Reduction of Absolute Poverty" (PARPA 1 and 2), the Committee remains concerned about the extreme poverty of part of the population of the State party and its impact on the equal enjoyment of economic, social and cultural rights by the most disadvantaged ethnic groups (art. 5 (e)).

417. The Committee recommends that the State party include in its next periodic report information on the socio-economic situation of the most disadvantaged ethnic groups, that it strengthen measures to reduce poverty and stimulate economic growth, and provide concrete detailed information on the outcome of those measures.

418. While acknowledging the Law 7/2006 on the *Provedor de Justiça* (Ombudsman), and that the election of the *Provedor* is scheduled for the coming session of the Parliament, the Committee is concerned about the resources, independence, competencies and effectiveness of

this institution as well as at the lack of information regarding the future national commission on human rights (art. 6).

The Committee recommends that the State party provide detailed information on the resources, independence, competencies and results of the activities of the *Provedor de Justiça*. Furthermore, the Committee recommends the State party to establish the future national commission on human rights in line with the Paris Principles and provide it with adequate resources. It also recommends that the State party avoid creating conflict in the mandates of both institutions.

419. While taking note of the anti-discrimination provisions of the Tourism Law of 2004 and the Labour Law of 2007, the Committee is concerned about the cases of hate speech, as well as racist and xenophobic acts and attitudes in the State party, in particular in the field of employment, and about the absence of measures to prevent and combat such phenomena (arts. 5 (e) and 7).

The Committee recommends that the State party strengthen its existing measures to prevent and combat xenophobia and racial prejudice, and provide information on the measures adopted with regard to promoting tolerance, in particular in the field of employment and access to services, through awareness-raising campaigns, including in the media.

420. The Committee notes the lack of information on complaints of racial discrimination and the absence of court cases regarding racial discrimination in the State party (arts. 6 and 7).

The Committee recalls that the absence of cases may be due to the victims' lack of information about their rights and therefore recommends that the State party ensure that appropriate provisions are included in national legislation regarding effective protection and remedies against violations of the Convention. Furthermore, the Committee recommends that the general public be duly informed of the legal remedies available for victims of racial discrimination. The Committee also recommends that the State party provide information on complaints of racial discrimination in its next periodic report.

421. The Committee is concerned at the lack of information on measures to disseminate information about the Convention, including training for members of the judiciary, law enforcement officials, teachers, social workers and other public officials on the provisions of the Convention and their application (art. 7).

The Committee recommends that the State party provide information on the human rights programmes in school curricula as well as on the specific training courses for members of the judiciary, teachers, social workers and other public officials on the provisions of the Convention.

422. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and recommends that it consider doing so.

423. The Committee also notes that the State party has not withdrawn its reservation to article 22 of the Convention and recommends that it consider doing so.

424. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111, concerning the funding of its meetings by the United Nations regular budget. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

425. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level.

426. The Committee wishes to encourage the State party to ratify the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

427. The Committee also wishes to encourage the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities.

428. The Committee further wishes to encourage the State party to ratify the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness. Furthermore, it also recommends the State party to withdraw its reservations to the 1951 Convention relating to the Status of Refugees.

429. The Committee requests that the periodic report of the State party and the present concluding observations be widely disseminated in the State party, in the appropriate languages.

430. The Committee recommends that the State party consult with organizations of civil society combating racial discrimination, as well as with the future national commission on human rights, as and when it comes into being, in connection with the preparation of the next periodic report.

431. The Committee also recommends that the State party submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

432. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 410, 418 and 419 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

433. The Committee recommends that the State party submit its thirteenth periodic report jointly with its fourteenth periodic report in a single report on the 18 May 2010, taking into account the guidelines for the CERD-specific document adopted by the Committee at its

seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

NEW ZEALAND

434. The Committee considered the fifteenth to seventeenth periodic reports of New Zealand (CERD/C/NZL/17), submitted in one document, at its 1821st and 1822nd meetings (CERD/C/SR.1821 and 1822), held on 31 July and 2 August 2007. At its 1840th meeting (CERD/C/SR.1840), held on 15 August 2007, it adopted the following concluding observations.

A. Introduction

435. The Committee welcomes the report submitted by New Zealand, which is in conformity with the reporting guidelines, and notes with appreciation the regularity with which the State party submits its reports, in compliance with the requirements of the Convention. It appreciates the attendance of a large delegation, composed of representatives of various institutions concerned, and the extensive and detailed responses provided to the questions asked by Committee members, including in writing.

436. The Committee appreciates that the New Zealand Human Rights Commission took the floor before the Committee on an independent basis, which further demonstrates the willingness of the State party's authorities to pursue a frank and constructive dialogue with the Committee.

B. Positive aspects

437. The Committee welcomes the importance given by the State party to the principle of self-identification when gathering data on the ethnic composition of its population, in accordance with general recommendation No. 8 (1990) of the Committee.

438. The Committee welcomes the adoption of the 2004 New Zealand Settlement Strategy and the Settlement National Plan of Action.

439. The Committee welcomes the New Zealand Diversity Action Programme.

440. The Committee appreciates the reduction of socio-economic disparities between Maori and Pacific peoples on the one hand, and the rest of the population on the other, in particular in the areas of employment and education.

441. The Committee appreciates the significant increase in the number of adults, including non-Maori, who can understand, speak, read and write the Maori language.

442. The Committee welcomes the ratification in 2006 of the 1961 Convention on the Reduction of Statelessness.

443. The Committee notes with satisfaction that the State party has increased the budget provided to the New Zealand Human Rights Commission by a yearly 20 per cent over the next four years.

C. Concerns and recommendations

444. The Committee notes that the Government of the State party has not formally endorsed the Human Rights Commission's New Zealand Action Plan for Human Rights, which also refers to race relations issues (art. 2).

The Committee recommends that the State party provide more detailed information on measures adopted to follow up on the Human Rights Commission's New Zealand Action Plan for Human Rights, regarding race relations issues. It encourages the State party to adopt, on the basis of the proposals made by the Human Rights Commission, its own Action Plan for Human Rights.

445. The Committee, having taken into consideration the explanations provided by the State party, remains concerned that the New Zealand Bill of Rights Act (NZBORA) does not enjoy protected status and that the enactment of legislation contrary to the provisions of that Act is therefore possible. The Committee considers that the requirement whereby the Attorney-General may bring to the attention of Parliament any provision of a Bill that appears to be inconsistent with the NZBORA is insufficient to guarantee full respect for human rights, in particular the right not to suffer from discrimination based on race, colour, descent or national or ethnic origin (art. 2).

The Committee recommends that the State party seek ways of ensuring that provisions of the Convention are fully respected in domestic law.

446. The Committee notes that the Treaty of Waitangi is not a formal part of domestic law unless incorporated into legislation, making it difficult for Maori to invoke its provisions before courts and in negotiations with the Crown.[3] It welcomes, however, the holding of a public discussion on the status of the Treaty and the efforts to enhance Crown-Maori relationships. The Committee remains concerned that other steps such as those described in paragraphs below tend to diminish the importance and relevance of the Treaty and to create a context unfavourable to the rights of Maori (arts. 2 and 5).

The Committee encourages the State party to continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm. The State party should ensure that such debate is conducted on the basis of a full presentation of all aspects of the matter, bearing in mind the importance of enhancing Crown-Maori relationship at all levels and the enjoyment by indigenous peoples of their rights.

447. The Committee notes with concern the proposal to remove statutory references to the Treaty of Waitangi through the Principles of the Treaty of Waitangi Deletion Bill (2006). It welcomes, however, the undertaking by the State party not to support the progress of that Bill any further (arts. 2 and 5).

The State party should ensure that the Treaty of Waitangi is incorporated into domestic legislation where relevant, in a manner consistent with the letter and the spirit of that Treaty. It should also ensure that the way the Treaty is incorporated, in particular regarding the description of the Crown's obligations, enables a better implementation of the Treaty.

448. The Committee is concerned that, in the report of the State party, historical treaty settlements have been categorized as special measures for the adequate development and protection of Maori. It notes, however, the statement made by the delegation that such categorization should indeed be reconsidered (art. 2 (2)).

The Committee draws the attention of the State party to the distinction to be drawn between special and temporary measures for the advancement of ethnic groups on the one hand, and permanent rights of indigenous peoples, on the other.

449. The Committee notes the steps adopted by the State party to review policies and programmes in the public service, which has led to the re-targeting of some programmes and policies on the basis of need rather than ethnicity. The Committee, while stressing that special measures are temporary and should be re-assessed on a regular basis, is concerned that these steps have been adopted in a political climate unfavourable to the rights of Maori (art. 2 (2)).

The State party should ensure, when assessing and reviewing special measures adopted for the advancement of groups, that concerned communities participate in such a process, and that the public at large is informed about the nature and relevance of special measures, including the State party's obligations under article 2 (2) of the Convention.

450. The Committee welcomes the progress achieved in the settlement of historical Treaty claims, and notes that 2008 has been chosen as a cut-off date for the lodging of historical Treaty claims. While noting the assurances provided by the State party that claims submitted before 2008 can still be amended and supplementary information taken into account, the Committee notes the concerns expressed by some Maori that such a cut-off date may unfairly bar legitimate claims (arts. 2 and 5).

The Committee recommends that the State party ensure that the cut-off date for the lodging of historical Treaty claims will not unfairly bar legitimate claims. It should pursue its efforts to assist claimants groups in direct negotiations with the Crown.

451. The Committee notes with concern that recommendations made by the Waitangi Tribunal are generally not binding, and that only a small percentage of these recommendations are followed by the Government. The Committee considers that such arrangements deprive claimants of a right to an effective remedy, and weaken their position when entering into negotiations with the Crown (arts. 2, 5 and 6).

The Committee recommends that the State party consider granting the Waitangi Tribunal legally binding powers to adjudicate Treaty matters. The State party should also provide the Tribunal with increased financial resources.

452. The Committee notes the information provided by the State party on the follow-up given to its decision 1 (66) in relation to the Foreshore and Seabed Act 2004. It remains concerned at the discrepancy between the assessment made by the State party and the one made by non-governmental organizations on the issue (arts. 5 and 6).

The Committee reiterates its recommendations that a renewed dialogue between the State party and the Maori community take place with regard to the Foreshore and Seabed Act 2004, in order to seek ways of mitigating its discriminatory effects,

including through legislative amendment where necessary; that the State party continue monitoring closely the implementation of the Act; and that it take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.

453. The Committee notes with concern that the New Zealand Curriculum, Draft for consultation 2006, does not contain explicit references to the Treaty of Waitangi. It notes, however, the assurances provided by the State party that other elements of the National Educational Guidelines as well as the Educational Act 1989 require an explicit reference to the Treaty of Waitangi, and that it is considering the recommendation to make references to the Treaty more explicit in the final version of the New Zealand Curriculum (arts. 2 and 7).

The Committee encourages the State party to include references to the Treaty of Waitangi in the final version of the New Zealand Curriculum. The State party should ensure that references to the Treaty in the curriculum are adopted or modified in consultation with the Maori.

454. The Committee reiterates its concern regarding the over-representation of Maori and Pacific people in the prison population and more generally at every stage of the criminal justice system. It welcomes, however, steps adopted by the State party to address this issue, including research on the extent to which the over-representation of Maori could be due to racial bias in arrests, prosecutions and sentences (arts. 2 and 5).

The Committee recommends that the State party enhance its efforts to address this problem, which should be considered as a matter of high priority. The Committee also draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

455. The Committee regrets that the State party has not assessed the extent to which section 27 of the Sentencing Act 2002, providing for the courts to hear submissions relating to the offender's community and cultural background, has been implemented and with what results.

The Committee encourages the State party to undertake such an assessment, and to include information in this regard in its next periodic report.

456. The Committee notes with satisfaction that the State party has decided to lift its reservation to the Convention on the Rights of the Child that limits access to publicly funded education and health services for undocumented children, and that it plans to amend its Immigration Act to eliminate the offence for education providers of enrolling children without the appropriate permit. It remains concerned however that under the new Immigration Bill, undocumented children will only be authorized to attend school provided they are not alone in New Zealand and their parents are taking steps to regularize their status (arts. 2 and 5).

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens, and recommends that public educational institutions be open to all undocumented children, without restrictions.

457. The Committee notes with concern that asylum-seekers may be detained in correctional facilities, even though such detention only concerns a very few individuals. It is also concerned

at reports according to which proposals have been made to include health and character grounds in the Immigration Act as a basis upon which to exclude or expel asylum-seekers (arts. 2 and 5).

The Committee recommends that the State party put an end to the practice of detaining asylum-seekers in correctional facilities, and ensure that grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees.

458. The Committee, having taken into consideration the information provided by the State party, remains concerned that there is no recording of complaints, prosecutions and sentences relating to racially motivated crime (arts. 4 and 6).

The Committee recommends that the State party study ways and means of assessing on a regular basis the extent to which complaints for racially motivated crimes are addressed in an appropriate manner within its criminal justice system. It should envisage, in particular, collecting statistical data on complaints, prosecutions and sentences for such crimes.

459. The Committee is concerned that the effectiveness of procedures to address racial discrimination may be compromised by a lack of public knowledge of the most appropriate avenues for particular complaints, inadequate accessibility by vulnerable groups and a lack of confidence by such groups in their effectiveness, as acknowledged by the Human Rights Commission (art. 6).

The Committee recommends that the State party adopt proactive measures aimed at addressing these difficulties.

460. The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Convention relating to the Status of Stateless Persons, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

461. The Committee recommends that the State party continue to take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention.

462. The Committee notes again that the State party has not made the optional declaration provided for in article 14 of the Convention, and invites it to consider doing so.

463. The Committee recommends that the State party continue to make its reports readily available to the public at the time of their submission.

464. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 447, 452, 453 and 456 above, within one year of the adoption of the present conclusions.

465. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including

guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

466. The Committee recommends to the State party that it submit its eighteenth, nineteenth and twentieth periodic reports in a single report, due on 22 December 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1). The report should be an update document and address all points raised in the present concluding observations.

REPUBLIC OF KOREA

467. The Committee considered the thirteenth to fourteenth periodic reports of the Republic of Korea, submitted in a single document (CERD/C/KOR/14), at its 1833rd and 1834th meetings (CERD/C/SR.1833 and 1834), held on 9 and 10 August 2007. At its 1844th meeting (CERD/C/SR.1844), held on 17 August 2007, it adopted the following concluding observations.

A. Introduction

468. The Committee welcomes the timely submission of the periodic reports by the Republic of Korea, and notes with appreciation the efforts made by the State party to address the issues raised by the Committee in its previous concluding observations (CERD/C/63/CO/9).

469. The Committee expresses appreciation for the open dialogue held with the high-level delegation and for the comprehensive and thorough answers given orally and in writing to the list of issues and to the wide range of questions raised by members.

470. The Committee notes with appreciation that the National Human Rights Commission of Korea took the floor before the Committee on an independent basis, which further demonstrates the willingness of the State party's authorities to pursue a frank and constructive dialogue with the Committee.

B. Positive aspects

471. The Committee welcomes the adoption, in May 2007, of a National Action Plan for the Promotion and Protection of Human Rights.

472. The Committee welcomes the adoption, in May 2007, of the Act on the Treatment of Foreigners in Korea.

473. The Committee also welcomes the establishment, in June 2006, of the Interpretation Support Centre for Foreign Migrant Workers.

474. The Committee notes with satisfaction the various measures by the State party to combat trafficking of foreign women for the purpose of sexual exploitation or domestic servitude, including the adoption of the Act on Punishment of Prostitution and Brokerage of Prostitution of March 2004 and the Guidelines for Dealing with Cases of Violation of the Act on Punishment of Prostitution and Brokerage of Prostitution.

475. The Committee welcomes the adoption, in May 2006, of the Educational Support Plan for Children from Multicultural Families.

C. Concerns and recommendations

476. Notwithstanding the assurances provided by the delegation concerning the direct applicability of article 1 of the Convention pursuant to the provision of article 6, paragraph 1, of the Constitution, the Committee notes the absence of a definition of racial discrimination in the law of the State party. The Committee further notes that article 11, paragraph 1, of the Constitution on equality and non-discrimination includes none of the prohibited grounds of discrimination referred to in article 1, paragraph 1, of the Convention (art. 1).

The Committee recommends that the State party bring its internal law in line with the Convention by including a definition of racial discrimination in keeping with that contained in article 1 of the Convention. The Committee further recommends that the State party consider reviewing the definition of discrimination set out in article 11, paragraph 1, of the Constitution with a view to extending the list of prohibited grounds of discrimination in accordance with article 1, paragraph 1, of the Convention.

477. While welcoming the recent adoption of the Act on the Treatment of Foreigners in Korea, aimed at eliminating discrimination against persons of foreign origin and facilitate their integration in Korean society, the Committee remains concerned about the persistence of widespread societal discrimination against foreigners, including migrant workers and children born from inter-ethnic unions, in all areas of life, including employment, marriage, housing, education and interpersonal relationships (arts. 2 and 5).

The Committee requests that the State party provide an English translation of the Act on the Treatment of Foreigners in Korea, as well as detailed information on its implementation. The Committee also recommends that the State party, in accordance with articles 2 and 5 of the Convention, adopt further measures, including legislation, to prohibit and eliminate all forms of discrimination against foreigners, including migrant workers and children born from inter-ethnic unions, and to guarantee the equal and effective enjoyment by persons of different ethnic or national origin of the rights set out in article 5 of the Convention.

478. The Committee notes with concern that the emphasis placed on the ethnic homogeneity of the State party may represent an obstacle to the promotion of understanding, tolerance and friendship among the different ethnic and national groups living on its territory. In this regard, while appreciating the explanation provided by the delegation that references to concepts such as "pure blood" and "mixed-bloods" in paragraphs 43 to 46 of the report are to be intended as a mere description of a terminology still in use in the State party, the Committee is nonetheless concerned that such terminology, and the idea of racial superiority that it may entail, continues to be widespread in Korean society (arts. 2 and 7).

The Committee requests that the State party provide in its next periodic report disaggregated statistical data on the number of persons born from inter-ethnic unions living on the territory of the State party. The Committee recommends that the State party adopt appropriate measures in the fields of teaching, education, culture and information, to recognize the multi-ethnic character of contemporary Korean society and overcome the image of Korea as an ethnically homogeneous country, which no longer corresponds to the actual situation existing in the State party. In this regard, the Committee recommends that the State party include in curricula and

textbooks for primary and secondary schools information about the history and culture of the different ethnic and national groups living on its territory, as well as human rights awareness programmes aimed to promote understanding, tolerance and friendship among all racial, ethnic and national groups.

479. While taking note of discussions currently under way in the State party with regard to the adoption of a proposed discrimination prohibition act, the Committee reiterates the concern expressed in paragraph 9 of its previous concluding observations that the existing legislation of the State party does not respond fully to the requirements of article 4 of the Convention (art. 4).

The Committee draws the attention of the State party to its general recommendations No. 7 (1985) and No. 15 (1993) concerning the implementation of article 4 of the Convention, and recommends that the State party adopt specific legislative measures to prohibit and punish racially motivated criminal offences in accordance with article 4 of the Convention. In this regard, the Committee encourages the State party to move expeditiously towards the drafting and the adoption of a discrimination prohibition act.

480. While taking note of the explanations provided by the delegation that as international treaties to which the Republic of Korea is a party automatically become the law of the land, non-citizens enjoy, in practice, most of the rights and freedoms set out in the Constitution on an equal basis with citizens, the Committee remains concerned that strictly in accordance with article 10 of the Constitution, only citizens are equal before the law and are entitled to exercise the rights set out in Chapter II of the Constitution (art. 5).

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on non-citizens, and recommends that the State party take all appropriate legislative and other measures to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in the Convention to the extent recognized under international law.

481. While appreciating the information provided by the delegation that the Immigration Control Act is currently being reviewed in order to strengthen the protection of refugees and asylum-seekers, the Committee notes with concern that only a limited number of asylum-seekers have been recognized as refugees since the entry into force of the 1951 Convention relating to the Status of Refugees, due to a complex procedure and long delays in the decision-making process on asylum claims (art. 5).

The Committee recommends that the Korean legislation on refugees and asylum seekers be reviewed in accordance with the 1951 Convention relating to the Status of Refugees and other recognized international standards. In particular, the Committee recommends that the refugee status determination process be carried out in a fair and expeditious manner, that asylum-seekers and persons granted humanitarian protection be allowed to work, and that comprehensive measures be adopted in order to facilitate the integration of refugees in Korean society.

482. While appreciating the efforts undertaken by the State party to combat trafficking of foreign women for the purpose of sexual exploitation or domestic servitude, the Committee remains concerned that trafficking of foreign women continues to be widespread (art. 5 (b)).

The Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, and recommends that the State party increase its efforts to combat trafficking of foreign women for the purpose of sexual exploitation or domestic servitude and provide adequate information, assistance and support to foreign women victims of human trafficking, with a particular regard to those with an irregular status.

483. The Committee notes with concern that according to information received, foreign women married to Korean nationals are not adequately protected against possible abuses perpetrated by their husbands or by the international marriage agencies, and encounter various obstacles to their integration in Korean society (art. 5 (b) and (c) (iv)).

The Committee recommends that the State party adopt appropriate measures to strengthen the protection of the rights of foreign female spouses, inter alia by ensuring that their legal resident status in case of separation/divorce does not depend entirely on the proof that the end of the relationship is to be attributed to the Korean spouse's fault. The Committee also recommends that the activities of international marriage agencies be regulated so as to avoid such abuses as excessive fees, withholding of essential information about the future Korean husband and confiscation of identity and travel documents. The Committee further suggests the adoption of all appropriate measures - including provision of adequate information on the country and its traditions and the organization of Korean language courses - to facilitate the integration of foreign female spouses in the society of the State party.

484. The Committee remains concerned that migrant workers can only be granted non renewable, three-year contracts, and face severe restrictions to their job mobility as well as discriminatory treatment and abuses in the workplace, such as longer working hours, lower wages, unsafe or dangerous conditions of work and short length employment contracts (three years). The Committee is also concerned that migrant workers, in particular those with an irregular status, encounter obstacles in obtaining legal protection and redress in cases of discriminatory treatment at the workplace, unpaid or withheld wages, or injury or illnesses suffered as a result of industrial accidents (arts. 5 (e) and 6).

The Committee recommends that the State party adopt adequate measures, including extension of the length of employment contracts, to ensure the effective enjoyment by migrant workers of their labour rights without any discrimination based on nationality.

The Committee also recommends that the State party take effective measures in order to ensure the right of all migrant workers, regardless of their status, to obtain effective protection and remedies in case of violation of their human rights by their employer. The Committee requests the State party to include in the next periodic report detailed information on the measures adopted to ensure the equal and effective enjoyment by all migrant workers of their rights under articles 5 (e) and 6 of the Convention.

485. While welcoming the information provided by the delegation on the number of complaints relating to racial discrimination considered by the National Human Rights Commission of Korea, the Committee regrets that the State party has not submitted sufficient information regarding the nature and outcome of these cases (art. 6).

The Committee requests that the State party provide detailed updated information on the number, nature and outcome of complaints relating to racial discrimination considered by the National Human Rights Commission of Korea pursuant to article 30 (1) of the National Human Rights Commission Act.

486. The Committee notes with concern that existing criminal law provisions that may be used to punish acts of racial discrimination, such as articles 307 and 309 concerning defamation or article 311 on libel, have never been invoked in national courts. The Committee also notes that although the Convention forms part of the domestic law and is directly applicable in the courts of the State party, there are no court decisions which contain references to or confirm the direct applicability of its provisions (arts. 6 and 7).

The Committee reminds the State party that the absence of complaints may be an indication of the absence of relevant specific legislation, of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. In this regard, the Committee recommends that the State party provide specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors and judges, on the mechanisms and procedures provided for in national legislation in the field of racism and discrimination. The Committee further recommends that the State party organize information campaigns and education programmes on the Convention and its provisions.

487. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

488. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report specific information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

489. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized.

490. The Committee recommends that the State party consult widely with the National Human Rights Commission of Korea, as well as with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

491. The Committee invites the State party to revise its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

492. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 477, 479 and 483 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

493. The Committee recommends that the State party submit its fifteenth and sixteenth periodic reports in a single document, due on 4 January 2010, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1).

Notes

[1] CERD, sixty-first session (2002), general recommendation No. 29: Article 1, paragraph 1, of the Convention (Descent), preamble.

[2] CERD, fifty-first session (1997), general recommendation No. 23: *Indigenous Peoples*.

[3] The term "Crown" is understood to refer to the Executive branch of Government. The Executive is comprised of those Members of Parliament who are Ministers of the Crown (collectively, the Executive Council) and the public service (including all government agencies and departments).

IV. FOLLOW-UP TO THE CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

494. At its sixty-fifth session, the Committee decided, in accordance with paragraph 2 of rule 65 of its rules of procedure, to appoint the following members as coordinator and alternate coordinator to further the implementation of paragraph 1 of rule 65 of its rules of procedure concerning requests for additional information from States parties.

Coordinator: Mr. Morten Kjaerum
Alternate: Mr. Nourredine Amir

495. At its sixty-sixth session, the Committee adopted terms of reference for the work of the coordinator on follow-up.[1] At its sixty-eighth session, it adopted guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee.[2]

496. At the 1806th meeting (seventieth session), held on 2 March 2007, and at the 1842nd meeting (seventy-first session) held on 16 August 2007, the coordinator on follow-up presented a report on his activities to the Committee.

497. On 12 April 2007, reminders were sent by the coordinator on follow-up to the following States parties which had not yet sent information following adoption of the concluding observations of the Committee at its sixty-seventh and sixty-eighth sessions, held respectively from 1 to 19 August 2005 and from 20 February to 10 March 2006: Barbados, Bosnia and Herzegovina, Botswana, El Salvador, Guatemala, Guyana, Lithuania, Mexico, Nigeria, Tanzania, Turkmenistan, Uzbekistan, Venezuela and Zambia.

498. Between 18 August 2006 and 17 August 2007, follow-up reports were received from the following States parties on the implementation of the recommendations regarding which the Committee had requested information within a year: Azerbaijan (CERD/C/AZE/CO/4/Add.1), Bahrain (CERD/C/BHR/CO/7/Add.1), France (CERD/C/FRA/CO/16/Add.1), Georgia (CERD/C/GEO/CO/3/Add.1), Lithuania (CERD/C/LTU/CO/3/Add.1), Mexico (CERD/C/MEX/CO/15/Add.1), Uzbekistan (CERD/C/UZB/CO/5/Add.2), Ukraine (CERD/C/UKR/CO/18/Add.1), Norway (CERD/C/NOR/CO/18/Add.1), and Guatemala (CERD/C/GTM/CO/11/Add.1) (see annex IV for an overview of the follow-up reports pending receipt, received, examined or scheduled for consideration at the seventy second session).

499. At its seventieth and seventy-first sessions, the Committee considered the follow-up reports of Azerbaijan, Bahrain, France, Georgia and Lithuania and continued the constructive dialogue with these States parties by sending them letters with comments and requests for further information.

500. At its seventy-first session, the Committee decided that the Chairperson should send a letter to Guyana, reiterating its request for the follow-up report due since 10 March 2007 and expressing concern about information received from non-governmental sources on the non-implementation of the recommendations contained in paragraphs 15, 16 and 19 of the concluding observations adopted in March 2006 at its sixty-seventh session (CERD/C/GUY/CO/14). The Committee requested Guyana to submit its comments by 30 November 2007 and informed the State party that in the absence of a response, it may decide to consider the relevant issues under its early warning and urgent action procedure at its seventy second session (18 February-7 March 2008).

501. At its seventy-first session, the Committee also asked the Chairperson to send a letter to China, requesting detailed information to be received prior to its seventy-second session on the implementation of paragraph 247 of the concluding observations adopted at its fifty ninth session (A/56/18) in which it expressed concern about the absence of legal provisions protecting persons from racial discrimination in the Hong Kong Special Administrative Region. This decision to request information from the State party was taken following receipt of information according to which the Race Discrimination Bill introduced into the Legislative Council of the Hong Kong Special Administrative Region does not appear to be in conformity with the Convention.

Notes

[1] For the terms of reference of the work of the coordinator on follow-up, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), annex IV.

[2] For the text of the guidelines, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18* (A/61/18), annex VI.

V. REVIEW OF THE IMPLEMENTATION OF THE CONVENTION IN STATES PARTIES WHOSE REPORTS ARE SERIOUSLY OVERDUE

A. Reports overdue by at least 10 years

502. The following States parties are at least 10 years late in the submission of their reports:

Sierra Leone	Fourth to nineteenth periodic reports (due from 1976 to 2006)
Liberia	Initial to fifteenth periodic reports (due from 1977 to 2005)
Gambia	Second to fourteenth periodic reports (due from 1982 to 2006)
Somalia	Fifth to sixteenth periodic reports (due from 1984 to 2005)
Papua New Guinea	Second to twelfth periodic reports (due from 1985 to 2005)
Solomon Islands	Second to twelfth periodic reports (due from 1985 to 2005)
Central African Republic	Eighth to eighteenth periodic reports (due from 1986 to 2006)
Afghanistan	Second to twelfth periodic reports (due from 1986 to 2006)
Seychelles	Sixth to fourteenth periodic reports (due from 1989 to 2005)
Ethiopia	Seventh to fifteenth periodic reports (due from 1989 to 2005)
Congo	Initial to ninth periodic reports (due from 1989 to 2005)
Saint Lucia	Initial to eighth periodic reports (due from 1991 to 2005)
Maldives	Fifth to eleventh periodic reports (due from 1993 to 2005)
Monaco	Initial to fifth periodic reports (due from 1996 to 2006)
Malawi	Initial to fifth periodic reports (due from 1997 to 2007)
United Arab Emirates	Twelfth to sixteenth periodic reports (due from 1997 to 2007)
Burkina Faso	Twelfth to sixteenth periodic reports (due from 1997 to 2007)

B. Reports overdue by at least five years

503. The following States parties are at least five years late in the submission of their reports:

Bulgaria	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Kuwait	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Niger	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Pakistan	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Panama	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Philippines	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)

Serbia	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Swaziland	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Peru	Fourteenth to eighteenth periodic reports (due from 1998 to 2006)
Burundi	Eleventh to fifteenth periodic reports (due from 1998 to 2006)
Cambodia	Eighth to twelfth periodic reports (due from 1998 to 2006)
Iraq	Fifteenth to nineteenth periodic reports (due from 1999 to 2007)
Cuba	Fourteenth to eighteenth periodic reports (due from 1999 to 2007)
Gabon	Tenth to fourteenth periodic reports (due from 1999 to 2007)
Jordan	Thirteenth to seventeenth periodic reports (due from 1999 to 2007)
Uruguay	Sixteenth to nineteenth periodic reports (due from 2000 to 2006)
Haiti	Fourteenth to seventeenth periodic reports (due from 2000 to 2006)
Guinea	Twelfth to fifteenth periodic reports (due from 2000 to 2006)
Rwanda	Thirteenth to sixteenth periodic reports (due from 2000 to 2006)
Syrian Arab Republic	Sixteenth to nineteenth periodic reports (due from 2000 to 2006)
Holy See	Sixteenth to nineteenth periodic reports (due from 2000 to 2006)
Zimbabwe	Fifth to eighth periodic reports (due from 2000 to 2006)
Malta	Fifteenth to eighteenth periodic reports (due from 2000 to 2006)
Cameroon	Fifteenth to eighteenth periodic reports (due from 2000 to 2006)
Colombia	Tenth to thirteenth periodic reports (due from 2000 to 2006)
Chile	Fifteenth to eighteenth periodic reports (due from 2000 to 2006)
Lesotho	Fifteenth to eighteenth periodic reports (due from 2000 to 2006)
Tonga	Fifteenth to eighteenth periodic reports (due from 2001 to 2007)
Mauritius	Fifteenth to eighteenth periodic reports (due from 2001 to 2007)

C. Action taken by the Committee to ensure submission of reports by States parties

504. At its forty-second session, the Committee, having emphasized that the delays in reporting by States parties hampered it in monitoring implementation of the Convention, decided that it would continue to proceed with the review of the implementation of the provisions of the Convention by the States parties whose reports were overdue by five years or more. In accordance with a decision taken at its thirty-ninth session, the Committee agreed that this review would be based upon the last reports submitted by the State party concerned and their consideration by the Committee. At its forty-ninth session, the Committee further decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review of implementation of the provisions of the Convention. The Committee agreed that in the absence of an initial report, the Committee would consider all information submitted by

the State party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations. In practice the Committee also considers relevant information from other sources, including from non-governmental organizations, whether it is an initial or periodic report that is seriously overdue.

505. Following its sixty-ninth session, the Committee decided to schedule at its seventieth session the review of the implementation of the Convention in the following States parties whose periodic reports were seriously overdue: Congo, Ethiopia, Nicaragua and Papua New Guinea. In the cases of the Congo and Nicaragua, the reviews were postponed at the request of the States parties, which indicated their intention to submit the requested reports shortly. The Committee also decided to postpone the review of the implementation of the Convention in Papua New Guinea.

506. At its seventieth session, the Committee requested the Chairperson to inform the Government of Seychelles of its decision to postpone the formal adoption of the provisional concluding observations adopted at its sixty-ninth session in light of the technical assistance to be provided by the Office of the United Nations High Commissioner of Human Rights. The Committee requested the State party to submit its overdue reports in a single document no later than 30 September 2007 and informed it that in the absence of the receipt of a report, the provisional concluding observations would be updated and formally adopted at the Committee's seventy second session.

507. At its 1806th meeting (seventieth session), held on 2 March 2007, the Committee reviewed the implementation of the Convention in Ethiopia and adopted concluding observations (see paragraphs 123 to 158 above). In a letter dated 9 March 2007, the Chairperson of the Committee drew the attention of the Permanent Representative of Ethiopia to the United Nations at Geneva to the concluding observations and requested information no later than 1 July 2007 on some priority issues raised in the concluding observations. In addition, the Committee invited a delegation of the State party to be present at its seventy-first session with a view to holding a preliminary dialogue and requested the submission of the overdue reports no later than 31 December 2007. The Chairperson also stressed that following consideration of the written information requested and the oral dialogue with the State party delegation, the Committee would decide at its seventy first session on any further action needed under one of the procedures at its disposal, including its early warning and urgent action procedure.

508. At its 1837th meeting held on 13 August 2007 (seventy-first session), the Committee held a dialogue with the Permanent Representative of Ethiopia to the United Nations at Geneva in a closed meeting. On the basis of this exchange, the Committee requested the Chairperson to send a letter to the Government of Ethiopia, welcoming the openness to dialogue demonstrated during that meeting as well as the commitment of the State party to submit its overdue report before the end of February 2008. The Committee further indicated that it had taken note of the information provided by the State party while remaining concerned, however, about the serious tensions between different ethnic groups and allegations of human rights violations. In order to clarify those concerns, the Committee requested the State party to provide, no later than 31 December 2007, additional detailed information on the preventive measures adopted against racially motivated violence, on the concrete actions taken to combat racial prejudice and intolerance between ethnic groups as well as on the measures to ensure the right to security for members of all ethnic groups. In accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, the Committee informed the State party that upon receipt and consideration of such information, it would decide at its seventy-second session, to be held from 18 February to

7 March 2008, on any further action to be taken under its early warning and urgent action procedure.

509. Following its seventieth session, the Committee decided to schedule at its seventy-first session a review of the implementation of the Convention in the following States parties whose initial and periodic reports were seriously overdue: Malawi, Namibia, Nicaragua, Pakistan and Togo. Namibia, Nicaragua and Togo were withdrawn from the list prior to the seventy-first session following the submission of their overdue reports.

510. The review of the implementation of the Convention by Pakistan was postponed at the request of the State party, which indicated its intention to submit its overdue reports shortly. The Committee requested submission of the report by 31 December 2007 and informed the State party that in the event of non-receipt of the report by the set deadline, it would reschedule the examination of the situation in Pakistan without a report at its seventy-third session, with a view to adopting concluding observations on the basis of other information made available to it, including reports from non-governmental sources.

511. In the case of Malawi, the review was postponed in light of the technical assistance to be provided shortly by the Office of the United Nations High Commissioner for Human Rights. The Committee informed the State party, however, that in case of non-receipt of the report by 30 June 2008, it would examine the situation in Malawi without a report at its seventy-third session and would adopt concluding observations on the basis of other information made available to it, including reports from non-governmental sources.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION

512. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee on the Elimination of Racial Discrimination for consideration. A list of 51 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I, section B. During the period under review, four more States made the declaration under article 14: Andorra, Argentina, Brazil and Morocco.

513. Consideration of communications under article 14 of the Convention takes place in closed meetings (rule 88 of the Committee's rules of procedure). All documents pertaining to the work of the Committee under article 14 (submissions from the parties and other working documents of the Committee) are confidential.

514. During its seventy-first session, on 8 August 2007, the Committee declared inadmissible communications Nos. 36/2006 (*P.S.N. v. Denmark*) and 37/2006 (*A.W.R.A.P. v. Denmark*), consideration of which had started during the Committee's seventieth session in February 2007 (these decisions are reproduced in full in annex V). In both cases, the petitioners claimed violations of articles 2, paragraph 1 (d), 4 (a), and 6 of the Convention, on account of the failure of the Danish police to initiate investigations into allegations of racist statements made by politicians against persons of "Muslim or Arab" background.

515. The Committee found that the impugned statements specifically referred to the Koran, to Islam and to Muslims in general, without specific reference to any race, colour, descent, or national or ethnic origin. While the elements of the case file did not allow the Committee to analyse and ascertain the intention of the impugned statements, it remained the case that no specific national or ethnic groups were directly targeted as such by these oral statements as reported and printed.

516. The Committee also noted that the Muslims currently living in the State party are of heterogeneous origin. While it recognized that it would be competent to consider a claim of "double" discrimination on the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin, it found that this was not the case here. Both petitions related to discrimination on religious grounds only. It concluded that the petitions fall outside the scope of the Convention and declared them inadmissible *ratione materiae* under article 14, paragraph 1.

517. The Committee did however take note of the offensive nature of the statements complained of and reminded the State party of its concluding observations adopted following consideration of the State party's reports in 2002 (CERD/C/60/CO/5), and 2006 (CERD/C/DEN/CO/17), which had highlighted and made recommendations upon similar concerns.

518. Also on 8 August 2007, during its seventy-first session, the Committee adopted its Opinion on communication No. 40/2007 (*Murat Er v. Denmark*) (see annex V for the full text). In this case, the petitioner, a student at the Copenhagen Technical School, claimed a violation of articles 2 (1) (d), 5 (e) (v) and 6 of the Convention, on the basis of the school's alleged

discriminatory practice towards non-ethnic Danes, consisting of accepting requests from employers not to send students of Pakistani or Turkish origin to train in their companies, and the State party's failure to investigate the existence of such a practice.

519. The Committee considered that the mere existence of cases where such requests had been accepted was in itself enough to ascertain the existence of de facto discrimination towards non ethnic Danish students, regardless of whether these qualified for an internship on other grounds. It further considered that the State party had an obligation to investigate whether such a racially discriminatory school practice existed and not rely solely on the fact that the petitioner did not qualify for an internship because of other reasons, such as his academic record.

520. The Committee concluded that the State party had violated the petitioner's right to equal enjoyment of his right to education and training under article 5 (e) (v) and that it had failed to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, in violation of articles 2 (1) (d) and 6 of the Convention.

VII. FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS

521. In the past, the Committee only informally monitored whether, how or the extent to which States parties implemented its recommendations adopted following the examination of communications from individuals or from groups of individuals. In light of the positive experiences of other treaty bodies, and following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1, available on the OHCHR website), the Committee decided, at its sixty-seventh session,[1] to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

522. Also at its sixty-seventh session, the Committee decided to add two new paragraphs to its rules of procedure.[2] On 6 March 2006, at its sixty-eighth session, Mr. Alexandre Linos Sicilianos was appointed Rapporteur for follow-up on opinions. He presented a report to the Committee with recommendations on further action to be taken. This report, which was adopted by the Committee at its sixty-ninth session, has been updated (see annex VI) and reflects all cases in which the Committee found violations of the Convention or where it provided suggestions or recommendations although it did not establish a violation of the Convention.

523. The table below shows a complete picture of follow-up replies from States parties received up to 17 August 2007, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

524. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

525. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 23 complaints and found violations of the Convention in 10 cases. In eight cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

Notes

[1] See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), annex IV, sect. I.
[2] Ibid., annex IV, sect. II.

Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Denmark (3)	10/1997, Habassi	X (A/61/18)				X
	16/1999, Kashif Ahmad	X (A/61/18)				X
	34/2004, Mohammed Hassan Gelle	X (A/62/18)	X (A/62/18)			
	40/2007, Er	Not yet due				
Netherlands (2)	1/1984, A. Yilmaz-Dogan				X (never requested by the Committee)	
	4/1991, L.K.				X (never requested by the Committee)	
Norway (1)	30/2003, The Jewish Community of Oslo	X (A/62/18)				X
Serbia and Montenegro (1)	29/2003, Dragan Durmic	X (A/62/18)				X
Slovakia (2)	13/1998, Anna Koptova	X (A/61/18)				X
	31/2003, L.R. et al.	X (A/61/18)				X

Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S.				X (never requested by the Committee)	
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan	28 January 2004				X
Denmark (3)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi				X	X
Norway (1)	3/1991, Narrainen				X (never requested by the Committee)	
Slovakia (1)	11/1998, Miroslav Lacko				X (never requested by the Committee)	

VIII. CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION

526. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider copies of petitions, copies of reports and other information relating to Trust and Non Self Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, transmitted to it by the competent bodies of the United Nations, and to submit to them and to the General Assembly its expressions of opinion and recommendations relating to the principles and objectives of the Convention in those territories.

527. At the request of the Committee, Mr. Pillai examined the documents made available to the Committee in order for it to perform its functions pursuant to article 15 of the Convention. At its 1844th meeting (seventy-first session), held on 17 August 2007, Mr. Pillai presented his report, for the preparation of which he had taken into account the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples covering its work during 2006 (A/61/23) and copies of the working papers on the 16 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council in 2006 and listed in document CERD/C/71/3, as well as in annex VII to the present report.

528. The Committee noted, as it has done in the past, that it was difficult to fulfil its functions comprehensively under article 15 of the Convention as a result of the absence of any copies of petitions pursuant to paragraph 2 (a), and owing to the fact that the copies of the reports received pursuant to paragraph 2 (b) contain only scant information directly relating to the principles and objectives of the Convention.

529. The Committee would like to repeat its earlier observation that in the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reference is made to the relations between the Special Committee and the Committee's continuous monitoring of related developments in Territories, having regard to the relevant provisions of article 15 of the Convention. The Committee noted, however, that issues concerning racial discrimination, and directly relating to the principles and objectives of the Convention, are not reflected in the sections of the report of the Special Committee which deal with a review of its work and the future work of the Special Committee.

530. The Committee further noted that the size of the population of some of the Non Self Governing Territories was larger than in a few of the independent countries which have ratified the Convention, and that there was significant ethnic diversity in a number of them, warranting a close watch on incidents or trends which reflect racial discrimination and violation of rights guaranteed in the Convention. The Committee therefore stressed that greater efforts should be made to generate more awareness about the provisions of the Convention in Non Self Governing Territories, and especially the procedure prescribed in article 15. The Committee further stressed the need for States parties administering Non-Self-Governing Territories to mention specifically the work done to this effect in their periodic reports to the Committee.

IX. ACTION TAKEN BY THE GENERAL ASSEMBLY AT ITS SIXTY-FIRST SESSION

531. The Committee considered this agenda item at its seventy-first session. For its consideration of this item the Committee had before it General Assembly resolution 61/148 of 19 December 2006 in which the Assembly, inter alia, welcomed measures taken by the Committee to follow up on its concluding observations and recommendations, such as the decision to appoint a follow-up coordinator and to adopt guidelines on the follow-up.

532. The Committee took note with great appreciation of the invitation extended to its Chairperson to present an oral report on the work of the Committee to the General Assembly at its sixty-third session under the item entitled "Elimination of racism and racial discrimination".

X. FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

533. The Committee considered the question of the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at its seventieth and seventy-first sessions.

534. On 30 January 2007, the Chairperson of the Committee participated in the sixth session of the Working Group of Experts on People of African Descent devoted to a discussion focusing on racial profiling.

535. At its seventieth session, the Committee adopted a study on possible measures to strengthen the implementation of the Convention through additional recommendations or the updating of monitoring procedures to be submitted to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action. It was agreed that Mr. Avtonomov and Ms. January-Bardill would represent the Committee at the second part of the fifth session of the Intergovernmental Working Group to be held in Geneva from 3 to 7 September 2007, during which the study would be discussed.

536. On 7 March 2007, at its 1813th meeting (seventieth session), the Committee held an exchange of views with the five experts selected by the Office of the High Commissioner for Human Rights to produce a base document outlining the substantive gaps in the International Convention on the Elimination of All Forms of Racial Discrimination and to make concrete recommendations to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action on the means and avenues to bridge any such gaps. On 22 May 2007, the Chairperson of the Committee held a further exchange of views with the five experts, recalling the views previously expressed by members.

XI. THEMATIC DISCUSSIONS AND GENERAL RECOMMENDATIONS

537. In examining the periodic reports of States parties, the Committee has found that some forms of discrimination within the terms of article 1 of the Convention are common to several States and can usefully be examined from a more general perspective. In August 2000, the Committee organized a first thematic debate on the issue of discrimination against Roma and, in August 2002, it held a discussion on descent based discrimination. At its sixty fourth session held in March 2004, the Committee held a third thematic discussion on non citizens and racial discrimination. A fourth thematic discussion was held by the Committee at its sixty-sixth session in March 2005 on the prevention of genocide.

538. At its seventy-first session, the Committee decided to hold its next thematic discussion on the issue of double discrimination on the grounds of race and religion during its seventy-third session, to be held from 28 July to 16 August 2008.

539. In addition, the Committee also decided, at its seventy-first session, to entrust Mr. Thornberry and Mr. Sicilianos with the task of drafting a new general recommendation on special measures.

XII. OVERVIEW OF THE METHODS OF WORK OF THE COMMITTEE

540. An overview of the methods of work of the Committee was included in its report to the fifty first session of the General Assembly.[1] It highlighted changes introduced in recent years and was designed to improve the Committee's procedures.

541. At its sixtieth session, the Committee decided to review its working methods at its sixty first session and asked Mr. Valencia Rodríguez, convenor of an open ended working group on this issue, to prepare and submit a working paper for consideration. The working paper submitted by Mr. Valencia Rodríguez was discussed and revised further by the Committee at its sixty second and sixty third sessions and adopted at the sixty third session, with the exception of one paragraph which remains pending. The text of the paper as adopted was included in an annex to the Committee's report to the fifty eighth session of the General Assembly.[2]

542. The Committee had the opportunity to discuss its working methods further at the meeting with States parties held at its 1839th meeting, on 14 August 2007 (see CERD/C/SR.1839). The main issues raised and discussed during this meeting, which was attended by a high number of representatives of States parties, included: the fruitful efforts of the Committee to streamline its working methods and to harmonize them with other treaty body working methods; the positive impact of the new follow-up procedure adopted by the Committee; the adoption and transmission of lists of issues by country rapporteurs sufficiently early so that States parties have enough time to draft and submit written replies before the session. Some delegates also recommended that the Committee consider the possibility of requesting from States parties the submission of focused reports, on the basis of a list of issues. Other representatives of States parties commented on the positive impact of the provision of input by national human rights institutions and non-governmental organizations in connection with the consideration of States parties' reports and on the value of enhanced cooperation between the Committee and other United Nations bodies. States parties also requested information from the Committee on various issues including, inter alia, how country rapporteurs are appointed and the criteria used by the Committee when selecting States parties to be considered under the review procedure and under the early warning and urgent action procedures. They also enquired about whether the Committee planned to contribute to the Durban Review process. Finally, many delegations expressed the wish that the Committee organize meetings with States parties on a more regular basis.

543. At the end of its seventy-first session, the Committee decided that it would discuss further and reach a decision regarding the timetable for the transmission of lists of issues to States parties during its seventy-second session.

544. At the end of its seventy-first session, the Committee also amended rule 40 of its rules of procedure so as to reflect its practice regarding the possibility for national human rights institutions accredited to take part in the deliberations of the Human Rights Council to address the Committee, with the consent of the concerned State party and in official meetings, on issues related to the dialogue with a State party the report of which is being considered by the Committee (see annex IX).

Notes

[1] *Official Reports of the General Assembly, Fifty-first Session, Supplement No. 18* (A/51/18), paras. 587-627.
[2] Ibid., *Fifty-eighth Session, Supplement No. 18* (A/58/18), annex IV.

XIII. DISCUSSION ON HARMONIZATION OF WORKING METHODS AND REFORM OF TREATY BODY SYSTEM

545. At its seventy-first session, the Committee had before it the report of the nineteenth meeting of persons chairing the human rights treaty bodies held at Geneva on 21 and 22 June 2007, including the report of the sixth inter-committee meeting held at Geneva from 18 to 20 June 2007 and attended by the Chairperson and by Mr. Sicilianos, who reported on the outcome of these meetings.

546. At the seventieth session, Mr. Thornberry reported to the Committee on his participation in the meeting of the working group on reservations (HRI/MC/2007/5), held on 14 and 15 December 2006, and Mr. Sicilianos reported at the seventy-first session on his participation in the meeting on reservations organized in Geneva by the International Law Commission on 15 and 16 May 2007 (HRI/MC/2007/5/Add.1). During these meetings, Mr. Thornberry and Mr. Sicilianos recalled the position of the Committee regarding the validity of reservations to international human rights treaties, and in particular its flexible and pragmatic approach regarding reservations. They stressed the practice of the Committee, which frequently requests further information or formulates substantive recommendations on issues covered by reservations, while inviting States to consider the scope, or even the withdrawal, of their reservations.

547. At the seventieth and seventy-first sessions, Mr. Pillai reported on his participation in the meetings of the working group on harmonization of the working methods of the human rights treaty bodies held on 27 and 28 November 2006 and on 17 and 18 April 2007 (HRI/MC/2007/2 and Add.1).

548. In line with the fifth inter-committee meeting's recommendation to treaty bodies regarding the need to review their reporting guidelines so as to take into account the revised guidelines on a common core document and treaty specific reports (HRI/MC/2006/3 and Corr.1), the Committee adopted, at its seventy-first session, revised guidelines for the CERD-specific document.

Annex I

STATUS OF THE CONVENTION

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (173) as at 17 August 2007

Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (51) as at 17 August 2007

Algeria, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia, Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela.

C. States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties[a] (43), as at 17 August 2007

Australia, Bahamas, Bahrain, Belize, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Guinea, Holy See, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands (for the Kingdom in Europe and the Netherlands Antilles and

Aruba), New Zealand, Norway, Poland, Republic of Korea, Saudi Arabia, Seychelles, Slovakia, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Note

[a] The following States have signed but not ratified the Convention: Bhutan, Djibouti, Grenada, Guinea-Bissau, Nauru and Sao Tome and Principe.

Annex II

AGENDAS OF THE SEVENTIETH AND SEVENTY-FIRST SESSIONS

A. Seventieth session (19 February-9 March 2007)

1. Filling of casual vacancies.
2. Adoption of the agenda.
3 Organizational and other matters.
4. Prevention of racial discrimination, including early warning measures and urgent action procedures.
5. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
6. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
7. Consideration of communications under article 14 of the Convention.
8. Follow-up procedure.
9. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

B. Seventy-first session (30 July-17 August 2007)

1. Adoption of the agenda.
2. Organizational and other matters.
3. Prevention of racial discrimination, including early warning measures and urgent action procedures.
4. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
5. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
6. Consideration of communications under article 14 of the Convention.
7. Follow-up procedure.

8. **Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.**

9. **Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories in which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.**

10. **Report of the Committee to the General Assembly at its sixty-second session under article 9, paragraph 2, of the Convention.**

Annex III

GUIDELINES FOR THE EARLY WARNING AND URGENT ACTION PROCEDURE

A. Introduction

1. In 1993, the Committee on the Elimination of Racial Discrimination adopted a working paper on the prevention of racial discrimination, including early warning and urgent procedures (A/48/18, annex III). Since 1993, the Committee has adopted numerous decisions under these procedures and made recommendations to States parties to the International Convention on the Elimination of All Forms of Racial Discrimination as well as, through the Secretary-General, to the Security Council for action to prevent serious violations of the Convention, in particular those that could lead to ethnic conflict and violence.

2. The Committee adopted its working paper at the time when the development of preventive action was identified and proposed by the Secretary-General, Mr. Boutros Boutros-Ghali, in his report entitled "An agenda for peace" (A/47/277-S/24111). The General Assembly, in its resolution 47/120 of 18 December 1992, emphasized the need for all organs and bodies of the United Nations to intensify their efforts to strengthen the Organization's role in preventive diplomacy and to continue the discussion of the Secretary-General's report with a view to taking adequate action. This idea was subsequently discussed in various treaty bodies, as reflected in the following consideration made by the fourth meeting of chairpersons of human rights treaty bodies:[a]

> "... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible."

3. The current working paper aims at revising the working paper adopted in 1993, in the light of the practice of the Committee since 1993 and of the current needs and recent developments.

B. Need for early warning and urgent action capacity in the current world context

4. In his keynote speech to the Stockholm International Forum on Preventing Genocide held in 2004, the Secretary-General, Mr. Kofi Annan, exhorted that there can be no more important issue and no more binding obligation than the prevention of genocide. The declaration adopted by the International Forum committed to using and developing practical tools and mechanisms to identify as early as possible and to monitor and report on genocidal threats to human life and society in order to prevent the recurrence of genocide, mass murder and ethnic cleansing.

5. In his report entitled "In larger freedom: towards development, security and human rights for all", the Secretary-General noted once again that "no task is more fundamental for the United Nations than the prevention and resolution of deadly conflict. Prevention, in particular, must be central to all our efforts through ... promoting democracy and the rule of law".[b]

6. In his report, the Secretary-General also called upon the United Nations High Commissioner for Human Rights to submit a plan of action (A/59/2005/Add.3), in which she reiterated the importance of prevention.

7. Since 1993, the Committee has considered a large number of situations and adopted decisions under its early warning and urgent action procedures. It has addressed the presence of serious, massive, or persistent patterns of racial discrimination, in some cases with genocidal dimensions. These have included acts of extreme violence such as bombing of villages, use of chemical weapons and landmines, extrajudicial killings, rape, and torture committed against minorities and indigenous peoples. Furthermore, the Committee adopted decisions concerning situations of, inter alia, large-scale internal displacement and refugee flows linked to racial discrimination and addressed cases of encroachment on the lands of indigenous communities, in particular exploitation of natural resources and infrastructure projects posing threats of irreparable harm to indigenous and tribal peoples. Other decisions of the Committee have addressed patterns of escalating racial hatred and violence, racial discrimination as evidenced in social and economic indicators, ethnic tensions, racist propaganda or appeals to racial intolerance, as well as the lack of an adequate legislative basis for the definition and criminalization of all forms of racial discrimination.

8. The decisions taken by the Committee have included specific requests for action: not only the submission of overdue reports by the State party concerned but also the urgent provision of specific information on the situation under consideration and on the measures taken by the State party to remedy the situation in full compliance with the Convention. Some decisions have also made reference, where relevant, to measures adopted by the Security Council on the situation concerned. Many decisions have included detailed recommendations to States parties to halt further human rights violations, to initiate a dialogue with victims of racial discrimination, and to seek technical assistance and advisory services from the Office of the High Commissioner for Human Rights. In some instances, the Committee has also offered its good offices and technical assistance, and on two occasions, field missions were conducted by Committee members. In other cases, the Committee has requested the Secretary-General to draw the attention of the competent organs, including the Security Council, to situations, and appealed for an international presence as well as regional cooperation to prevent further deterioration of the situation and to increase assistance to the victims. The Committee has also recommended to the competent United Nations organs to provide humanitarian assistance. It has frequently reminded States parties as well as the international community of their obligation to prosecute and punish perpetrators of international crimes and provide reparations to victims.

9. Since its sixty-fifth session, the work of the Committee has been facilitated by a five-member working group on early warning and urgent action procedures.

10. At its sixty-sixth session, in March 2005, the Committee held a thematic discussion on the prevention of genocide, and adopted a declaration on the prevention of genocide (CERD/C/66/1) for the consideration of the States parties, the Special Adviser to the Secretary-General on the prevention of genocide, the Secretary-General, and the Security Council. Furthermore, at its sixty-seventh session, the Committee adopted a decision on follow-up to the declaration, identifying indicators for patterns of systematic and massive racial discrimination (CERD/C/67/1).

11. At its seventieth session, the Committee decided to request the working group to prepare a draft paper which would include terms of reference for its activities and provide an update of

the 1993 working paper on the early warning and urgent action procedure, on the basis of the practice of the Committee since 1993.

C. Indicators for the early warning and urgent action procedure

12. The Committee shall act under its early warning and urgent action procedure when it deems it necessary to address serious violations of the Convention in an urgent manner. The Committee shall be guided by the indicators set out below which replace the criteria in the 1993 working paper. As these indicators may be present in situations not requiring immediate attention to prevent and limit serious violations of the Convention, the Committee shall assess their significance in light of the gravity and scale of the situation, including the escalation of violence or irreparable harm that may be caused to victims of discrimination on the grounds of race, colour, descent or national or ethnic origin:

(a) Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;

(b) Presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other State officials;

(c) Adoption of new discriminatory legislation;

(d) Segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life;

(e) Lack of an adequate legislative framework defining and criminalizing all forms of racial discrimination or lack of effective mechanisms, including lack of recourse procedures;

(f) Policies or practice of impunity regarding: (a) Violence targeting members of a group identified on the basis of race, colour, descent or national or ethnic origin by State officials or private actors; (b) Grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, colour, descent, national or ethnic origin; (c) Development and organization of militia groups and/or extreme political groups based on a racist platform;

(g) Significant flows of refugees or displaced persons, especially when those concerned belong to specific ethnic groups;

(h) Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources;

(i) Polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.

D. Possible measures to be taken under the early warning and urgent action procedure

13. The Committee shall decide to consider a specific situation under its early warning and urgent action procedure on the basis of the information made available to it by, inter alia,

United Nations agencies and human rights bodies, special procedures of the Human Rights Council, regional human rights mechanisms, and national human rights institutions and non-governmental organizations, that reflects serious violations of the Convention according to the above indicators.

14. The measures to be taken by the Committee under the early warning and urgent action procedure may include:

(a) To request the State party concerned for the urgent submission of information on the situation considered under the early warning and urgent action procedure;

(b) To request the Secretariat to collect information from field presences of the Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions, and non-governmental organizations on the situation under consideration;

(c) Adoption of a decision including the expression of specific concerns, along with recommendations for action, addressed to:

(i) The State party concerned;

(ii) The Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, or the independent expert on minority issues;

(iii) Other relevant human rights bodies or special procedures of the Human Rights Council;

(iv) Regional intergovernmental organizations and human rights mechanisms;

(v) The Human Rights Council;

(vi) The Special Adviser of the Secretary-General on the prevention of genocide;

(vii) The Secretary-General through the High Commissioner for Human Rights, together with a recommendation that the matter be brought to the attention of the Security Council.

(d) To offer to send to the State party concerned one or more of the members of the Committee in order to facilitate the implementation of international standards or the technical assistance to establish a human rights institutional infrastructure;

(e) Recommendation to the State party concerned to avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights.

E. Terms of reference of the working group on early warning and urgent action

Establishment of a working group

15. The Committee shall, in accordance with rule 61 of its rules of procedure,[c] set up a working group to meet during its sessions, or at any other convenient time to be decided by the Committee in consultation with the Secretary-General, for the purpose of making recommendations to the Committee under its early warning and urgent action procedure and assisting the Committee in any manner which the Committee may decide.

16. The Working Group shall not comprise more than five members of the Committee, to be elected for a renewable term of two years, respecting the principle of equitable geographical representation.

17. The Working Group shall elect its own officers, including the member to act as coordinator of the Working Group, develop its own working methods, and apply as far as possible the rules of procedure of the Committee to its meetings.

18. The coordinator shall: (a) convene meetings of the Working Group; (b) preside at meetings of the Working Group; (c) deport on meetings of the Working Group to the Committee; (d) fulfil other responsibilities which might be required for the proper functioning of the Working Group in consultation with the members of the Working Group.

Meetings

19. Meetings of the Committee or the Working Group during which situations under the early warning and urgent action procedure will be examined shall be closed. Meetings during which the Committee may consider general issues under the early warning and urgent action procedure may be public if the Committee so decides.

20. The Working Group shall operate in close cooperation and consultation in particular with the Chairperson of the Committee, the Rapporteur of the Committee, other members of the Bureau, the Follow-up Coordinator and his or her alternate.

21. The Working Group is mandated to analyse and assess in a preliminary way information received on situations that may require urgent action; it shall make recommendations to the Committee as well as draft decisions of the Committee and letters addressed to States parties.

22. The Working Group may recommend to the Committee the adoption of any of the measures referred to in section D above.

23. The Committee may adopt in a private meeting any decision or action to be taken under the early warning and urgent action procedure.

Notes

[a] A/47/628.

[b] A/59/2005, para. 106.

[c] Pursuant to article 10 (1) of the international convention on the elimination of all forms of racial discrimination the committee shall adopt its own rules of procedure. According to rule 61 of its rules of procedure, the committee may, in accordance with the provisions of the convention and subject to the provisions of rule 25, set up such subcommittees and other ad hoc subsidiary bodies as it deems necessary and define their composition and mandates. Each subsidiary body shall elect its own officers and adopt its own rules of procedure.

Annex IV

OVERVIEW OF INFORMATION PROVIDED BY STATES PARTIES ON THE IMPLEMENTATION OF THE CONCLUDING OBSERVATIONS

Sixty-sixth session (21 February-11 March 2005) - Follow-up reports due by 11 March 2006

State party	Date of receipt of follow-up report	Session at which follow-up report was discussed
Australia	5 April 2006	Sixty-ninth session
Azerbaijan	10 May 2007	Seventy-first session
Bahrain	19 October 2006	Seventieth session
France	3 August 2006	Seventieth session
Ireland	15 June 2006; follow-up mission conducted from 21 to 23 June 2006	Sixty-ninth session
Lao People's Democratic Republic	19 May 2006	Sixty-ninth session
Luxembourg	No follow-up report requested	

Sixty-seventh session (1-19 August 2005) - Follow-up reports due by 19 August 2006

State party	Date of receipt of follow-up report	Session at which follow-up report was discussed
Nigeria	Report not received[a]	
Barbados	Report not received[a]	
Georgia	13 December 2006[a]	Seventieth session
Venezuela	Report not received[a]	
Zambia	Report not received[a]	
Turkmenistan	Report not received[a]	
Iceland	No follow-up report requested	
Tanzania	Report not received[a]	

[a] A reminder was sent by the Co-ordinator on Follow-up to this State party on 12 April 2007.

Sixty-eighth session (20 February-10 March 2006) - Follow-up reports due by 10 March 2007

State party	Date of receipt of follow-up report	Session at which follow-up report was discussed
Lithuania	14 February 2007	Seventy-first session
Guyana	Report not received[a]	
Mexico	22 May 2007	Report scheduled for consideration at the seventy-second session
El Salvador	Report not received[a]	
Guatemala	20 July 2007	Report scheduled for consideration at the seventy-second session
Uzbekistan	2 July 2007	Report scheduled for consideration at the seventy-second session
Botswana	Report not received[a]	
Bosnia and Herzegovina	Report not received[a]	

[a] A reminder was sent by the Co-ordinator on Follow-up to this State party on 12 April 2007.

Sixty-ninth session (31 July-18 August 2006) - Follow-up reports due by 18 August 2007

State party	Date of receipt of follow-up report	Session at which follow-up report was discussed
Estonia	Report not received	
Denmark	Report not received	
Mongolia	Report not received	
Norway	7 August 2007	
Oman	Report not received	
Ukraine	12 August 2007	
Yemen	Report not received	
South Africa	Report not received	

Annex V

Decisions and opinions of the Committee under article 14 of the Convention

Decision concerning communication No. 36/2006

Submitted by: P.S.N. (represented by counsel, the Documentation and Advisory Centre on Racial Discrimination)

Alleged victim: The petitioner

State party: Denmark

Date of communication: 10 February 2006 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 8 August 2007

Adopts the following:

1.1 The petitioner is Mr. P.S.N., a Danish citizen born on 11 October 1969 in Pakistan, now residing in Denmark, and a practising Muslim. He alleges a violation by Denmark[a] of articles 2, paragraph 1 (d), 4 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel, Ms. Line Bøgsted of the Documentary and Advisory Centre on Racial Discrimination (DACoRD).

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 23 June 2006.

Factual background

2.1 In view of the elections of 15 November 2005, Ms. Louise Frevert, member of Parliament for the Danish People's Party, published on her website statements against immigration and Muslims, under the headline "articles no one dares to publish". These included statements relating to Muslims, such as:

> "... because they think that we are the ones that should submit to Islam, and they are confirmed in this belief by their preachers and leaders. (...) Whatever happens, they believe that they have a right to rape Danish girls and knock down Danish citizens."

2.2 In the same text, Ms. Frevert mentioned the possibility of deporting young immigrants to Russian prisons, and added:

> "Even this solution is a rather short-term one, however, because when they return again, they will just be even more determined to kill Danes."[b]

Another article on the website stated that:

> "We can spend billions of Kroner and hours in trying to integrate Muslims into the country, but the result will be what the doctor observes. The cancer spreads without hindrance while we are talking."

2.3 Several of these statements were previously published in a book by Ms. Frevert, under the title *In short - a political statement*. In this book, other statements against Muslims read:

"We are hit by our own 'human rights' laws and have to see our culture and governmental system yield to a superior force building on 1,000 years of dictatorship, a clerical rule" (p. 36).

"The march of events is certainly true. It can be measured. But the Muslim means of achieving the goal of the ongoing third holy war (third Jihad) are secret" (p. 37).

2.4 Ms. Frevert later withdrew some of the material from the web page as a result of the public debate generated by her statements. However, on 30 September 2005, in an interview to the Danish newspaper *Politiken*, she upheld the statements. The following extract is from an article entitled "The Danes are overrun":

"(Reporter) *How many are there of those who believe that they have a right to rape Danish girls?*

"(Ms. Frevert) I don't know anything about that. It should be seen in consideration of the fact that the Koran says in certain places that you may behave as you like to women in a male chauvinist spirit. It is a rhetorical way of expression relative to the saying of the Koran.

"(Reporter) *Are you saying that it is OK according to the Koran to rape Danish girls?*

"(Ms. Frevert) I am saying that the Koran allows you to use women as you like.

"(Reporter) *How many Danish girls get raped by Muslims?*

"(Ms. Frevert) I have no knowledge about that as such, other than that it is very well known that there has been a rape in a toilet by the courthouse. So that is a concrete example. How many I don't know, but you know too from court cases that there have been rapes.

"(Reporter) *Yes, but if it more or less appears from the Koran that rape is OK, then one would presumably be able to bring forth substantially more examples.*

"(Ms. Frevert) I am not saying that it is a pattern, I am saying that this is what may happen.

"(Reporter) *In the chapter that you have now removed, you wrote that our laws forbid us to kill them. Is that what you would like the most?*

"(Ms. Frevert) No, but I am certainly allowed to write it. I am allowed to write exactly whatever suits me. If they rape and kill other people the way they do with suicide bombs, etc. - well, you aren't allowed to do so in our country, are you?"

2.5 On 30 September, 13 October and 1 November 2005, the DACoRD, on the petitioner's behalf, filed three complaints against Ms. Frevert for violations of section 266b of the Danish Criminal Code,[c] which prohibits racial statements. In the first complaint, DACoRD claimed that the website statements were directed against a specific group of people (Muslims), that they were taunting and degrading, and that they had a propagandistic

character, as they were published on a website directed at a large audience, and at the same time sent to various Danish newspapers for purposes of publication. The DACoRD quoted several decisions of conviction by Danish courts for statements published on websites, which were considered as "dissemination to a wide circle of people". The second complaint related to Ms. Frevert's book, in particular pages 31 to 41, which the petitioner claimed contained threatening, taunting and degrading statements against Muslims. The third complaint related to the article published in the *Politiken*. DACoRD claimed that the statements in the article violated section 266b of the Criminal Code and that they confirmed the statements published on the website.

2.6 The first complaint (relating to the website) against Ms. Frevert was rejected by the Copenhagen Police on 10 October 2005, on the ground that there was no reasonable evidence to support that an unlawful act had been committed. In particular, the decision pointed out that it did not appear, with the necessary reasonable prospect for a conviction, that Ms. Frevert had the intent to disseminate the listed quotations, and that it appeared that she was unaware that those statements had been posted on the web. The webmaster (Mr. T.) took entire responsibility for the publication of the statements and was charged with violation of section 266b of the Criminal Code. On 30 December 2005, the Copenhagen Police forwarded the case file to the Helsingør Police for further investigation of the case against him. The case is still under investigation by the Helsingør Police.

2.7 On 13 December 2005, the Regional Public Prosecutor of Copenhagen, Frederiksberg and Tårnby confirmed the decision of the police not to prosecute Ms. Frevert, because she and Mr. T. had concurrently explained their collaboration and that the articles had by mistake been posted unedited on the website. He found that it could not be proved that Ms. Frevert had any knowledge that the articles were put on her website and that she had the necessary intent to disseminate them. This decision cannot be appealed.

2.8 The second complaint (relating to the book) was rejected by the Commissioner of the Copenhagen Police on 18 October 2005, as there was no reasonable evidence to support that an unlawful act had been committed. The decision indicated that the book had been published for the purpose of a political debate and did not contain specific statements which could be covered under the Criminal Code, section 266b. The DACoRD did not appeal the Commissioner's decision.

2.9 The third complaint (relating to the interview) was rejected by the Commissioner of the Copenhagen Police on 9 February 2006, as there was no reasonable evidence to support that an unlawful act had been committed. In reaching this decision, the Commissioner took into consideration the principles of freedom of expression and free debate. He also took into account that the statements were made by a politician in the context of a public debate on the situation of foreigners. He considered that in light of the right of freedom of expression, the statements made by Ms. Frevert were not offensive enough to constitute a violation of section 266b of the Criminal Code.

2.10 On 19 May 2006, the Regional Public Prosecutor confirmed the police's decision not to prosecute Ms. Frevert for the statements in the interview. He considered that the representation of Muslims and second generation immigrants by Ms. Frevert in the interview was not so offensive as to be considered insulting or degrading to Muslims or second generation immigrants within the meaning of section 266b of the Criminal Code. This decision is final and cannot be appealed.

2.11 The petitioner argues that questions relating to the pursuance by the police of charges against individuals are entirely discretionary, and that there is no possibility to bring the case before Danish courts. Legal actions against Ms. Frevert would not be effective, given

that the police and prosecutor have rejected the complaints against her. The petitioner refers to a decision of the Eastern High Court of 5 February 1999, where it was held that an incident of racial discrimination does not in itself imply a violation of the honour and reputation of a person under section 26 of the Act in Civil Liability.[d] The petitioner concludes that he has no further remedies under national law.

2.12 The petitioner indicates that he has not availed himself of any other procedure of international investigation or settlement.

The complaint

3.1 The petitioner claims that the decision of the Copenhagen Police not to initiate an investigation into the alleged facts violates articles 2, paragraph 1 (d); 4 (a); and 6 of the Convention, as the documentation presented by the petitioner should have motivated the police to make a thorough investigation of the matter. He contends that there have been no effective means to protect him from racist statements in this case.

3.2 The petitioner further claims that the decisions of the Copenhagen Police and the prosecutor to reject his complaints violate article 6 of the Convention. He contends that the Danish authorities did not examine the material in full and did not take his arguments into account.

State party's observations on the admissibility and merits of the communication

4.1 On 10 November 2006, the State party made its submissions on the admissibility and merits of the communication. On admissibility, it submits that the claims fall outside the scope of the Convention and that the petitioner failed to establish a prima facie case for purposes of admissibility, as a large number of the various statements comprised by the communication concerns persons of a particular religion and not persons of a particular "race, colour, descent, or national or ethnic origin" within the meaning of article 1 of the Convention. However, the State party acknowledges that it is possible to argue to a certain extent that the statements refer to second-generation immigrants and set up a conflict between "the Danes" and them, thereby falling to some degree within the scope of the Convention.

4.2 The State party further submits that the part of the communication relating to the statements in Ms. Frevert's book is inadmissible under article 14, paragraph 7 (a), of the Convention, as the petitioner has not exhausted all available domestic remedies. When the Commissioner of the Copenhagen Police decided, on 18 October 2005, to discontinue investigation of the case against Ms. Frevert in relation to the publication of her book, the petitioner did not appeal the decision to the Regional Public Prosecutor. Thus, he has failed to exhaust domestic remedies, and the part of the communication concerning the statements in the book should be declared inadmissible.

4.3 On the merits, the State party disputes that there was a violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention. On the claim that the documentation presented to the police should have motivated it to initiate a thorough investigation of the matter, the State party argues that the Danish authorities' evaluation of the petitioner's reports of alleged racial discrimination fully satisfies the requirements of the Convention, even though they did not produce the outcome wanted by the petitioner. The Convention does not guarantee a specific outcome of cases on alleged racially insulting statements, but sets out certain requirements for the authorities' investigation of such alleged statements. The State party argues that these requirements have been satisfied in the case, as the Danish

authorities *did* take effective action, by processing and investigating the reports lodged by the petitioner.

Ms. Frevert's website

4.4 The State party indicates that under section 749 (2) of the Administration and Justice Act,[e] the police may discontinue an investigation already initiated when there is no basis for continuing the investigation. In criminal proceedings, the prosecutor has the burden of proof that a criminal offence was committed. It is important for the sake of due process that the evidence is of certain strength for the courts to convict an accused. Pursuant to section 96 (2) of the Administration of Justice Act,[f] public prosecutors have a duty to observe the principle of objectiveness. They cannot prosecute a person unless they are of the opinion that the prosecution will lead to conviction with a reasonable prospect of certainty. This principle is designed to protect innocent persons from prosecution.

4.5 The State party is aware that it has a duty to initiate an investigation when complaints related to acts of racial discrimination are filed. An investigation must be carried out with due diligence and expeditiously, and must be sufficient to determine whether or not an act of racial discrimination has occurred.

4.6 The State party points out that upon receipt of the complaint regarding Ms. Frevert's website, the Copenhagen Police initiated an investigation of the case. When interviewed, both Ms. Frevert and Mr. T. stated that the webmaster had created the website and that he had uploaded the relevant material without Ms. Frevert's knowledge. The agreement was that only articles and contributions approved by Ms. Frevert were to be posted on the website. By mistake, 35 articles by Mr. T. were posted on the website in unedited form and without Ms. Frevert's prior approval. When the mistake was discovered, the articles were removed. The webmaster was charged with violation of section 266b of the Criminal Code.

4.7 The State party contends that the police investigated the matter thoroughly. Once it appeared that the articles were posted without Ms. Frevert's knowledge, the public prosecutors rightly assessed that it would not be possible to prove that she had intended a wide dissemination of the statements. Criminal proceedings could therefore not be expected to result in her conviction and the public prosecutors therefore decided not to prosecute her. That the investigation against Mr. T. remains pending shows that the police takes reported acts of racial discrimination seriously and investigates them thoroughly and effectively. The State party argues that the police made a thorough investigation of the matter, that the material was examined in full and that the arguments presented by the DACoRD were taken into consideration, in accordance with article 6 of the Convention. The investigation revealed Ms. Frevert's lack of intent to violate section 266b of the Criminal Code. The fact that the case had another outcome than wished by the petitioner is irrelevant.

Ms. Frevert's book

4.8 Under section 749 (1)[g] and section 742 (2)[h] of the Administration and Justice Act, the public prosecutor must assess whether a criminal offence subject to public prosecution was committed. If there is no basis for assuming that a criminal offence has been committed, the public prosecutor has to dismiss the report. The Commissioner of the Copenhagen Police discontinued the investigation concerning the book as it had been published for the purpose of generating a political debate, and as it contained no specific statements that might fall under section 266b of the Criminal Code. In addition, the DACoRD did not mention in its report which statements it considered to fall within the scope of that provision.

4.9 The State party emphasizes that there were no problems of evidence and no need for the police to continue the investigation, as the police was in possession of the book in question, and both Ms. Frevert and Mr. T. were interviewed on this matter. Both stated that the disputed contribution to the book was written by Mr. T., but that this contribution had been edited and approved by Ms. Frevert, who was responsible for the publication of the book. The only question left for the Police Commissioner was whether there were statements in the book that could be considered to fall within the scope of section 266b of the Criminal Code. After a thorough analysis of the book's contents, he considered that the statements were broad and clearly published as part of a political debate in anticipation of the upcoming election. This legal assessment was thorough and adequate, and the public prosecutor's handling of the case satisfied the requirements that can be inferred from article 2, paragraph 1 (d), and article 6 of the Convention.

Statements made by Ms. Frevert in the newspaper Politiken on 30 September 2005

4.10 The State party recalls that it does not follow from the Convention and the jurisprudence of the Committee that prosecution should be initiated in *all* cases reported to the police, in particular if no basis is found for prosecution. In this case, there were no problems of evidence, as the statements were printed in the newspaper as quotations of Ms. Frevert, and therefore there was no need for the police to initiate an investigation to identify the specific contents or the originator of the statements.

4.11 The State party argues that the legal assessment made by the public prosecutors was thorough and adequate. They evaluated the statements in the light of the fact that they were made by a politician in the context of a political debate about religion and immigrants, and balancing the protection of the right to freedom of expression, protection of the freedom of religion and protection against racial discrimination. The statements must be seen in the context in which they were made, namely as contributions to a political debate about religion and immigrants, and without regard as to whether the reader supports Ms. Frevert's viewpoint on these issues. A democratic society has to make room for a debate about such viewpoints, within certain limits. The prosecutors considered that the statements were not so gross that they could be deemed "insulting or degrading" within the meaning of section 266b of the Criminal Code.

4.12 The State party argues that the right to freedom of expression is particularly imperative for an elected representative of the people. She represents her electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of a Member of Parliament, like Ms. Frevert, call for close scrutiny on the part of public prosecutors. In this case, they interpreted section 266b in the light of the context in which the statements were made and with due consideration of the fundamental principle of the right to freedom of expression for a Member of Parliament. The State party concludes that the public prosecutors' handling of the case satisfies the requirements that can be inferred from article 2, paragraph 1 (d), and article 6 of the Convention.

4.13 The State party concludes that it is not possible to infer an obligation under the Convention to prosecute in situations that have been found not to provide a basis for prosecution. The Administration of Justice Act offers the requisite remedies compatible with the Convention and the relevant authorities have fully met their obligations in this case.

Petitioner's comments

5.1 On 29 December 2006, the petitioner commented on the State party's submissions. On the argument that domestic remedies were not exhausted with regards to the complaint

about Ms. Frevert's book, it is submitted that the text of the book was also published on her website. The report to the police was meant to cover the whole website, not only the articles under the heading "Articles that nobody dares to publish". When she was interviewed about the website, the police failed to ask her if she was the author of the book, which had been posted as a document on the website. The police apparently based its decision on a very small part of the material placed on the website.

5.2 The petitioner acknowledges that no appeal was filed against the decision of 18 October 2005 of the Copenhagen Police to discontinue the investigation of the case in relation to the book. However, the day before, a complaint was filed against the website, which included the text of the book. Consequently, an appeal of that decision would only have been a duplication of the complaint already sent to the regional prosecutor's office. Therefore, the final decision by the Regional Prosecutor of 13 December 2005 is a final decision regarding both the statements posted on the website and contained in the book. The petitioner therefore considers that he exhausted domestic remedies in respect of all parts of the complaint.

5.3 With respect to the argument that the communication falls outside the scope of the Covenant, the petitioner contends that Islamophobia, just like attacks against Jews, has manifested itself as a form of racism in many European countries, including Denmark. After 11 September 2001, attacks against Muslims have intensified in Denmark. Members of the Danish People's Party use hate speech as a tool to stir up hatred against people of Arab and Muslim background. In their view, culture and religion are connected in Islam. The petitioner argues that the Committee already concluded that Danish authorities do not ensure an effective implementation of criminal law in relation to hate speech against Muslims and Muslim culture, especially by politicians. He invokes the concluding observations on Denmark adopted by the Committee in 2002 and 2006:

> "The Committee is concerned about reports of a considerable increase in reported cases of widespread harassment of people of Arab and *Muslim* backgrounds since 11 September 2001. The Committee recommends that the State party monitor this situation carefully, take decisive action to protect the rights of victims and deal with perpetrators, and report on this matter in its next periodic report."

> "The Committee, while taking note of the State party's efforts to combat hate crimes, is concerned about the increase in the number of racially motivated offences and in the number of complaints of hate speech. The Committee is also concerned about *hate speech by some politicians in Denmark*. While taking note of the statistical data provided on complaints and prosecutions launched under section 266b of the Criminal Code, the Committee notes the refusal by the Public Prosecutor to initiate court proceedings in some cases, including the case of the publication of *some cartoons associating Islam with terrorism* (arts. 4 (a) and 6)." (*Emphasis added.*)[i]

5.4 On the merits, the petitioner refers to the fact that Ms. Frevert was not found responsible for the material on the website. However, in the interview, the journalist quoted the article and asked her "Are you saying that it is OK according to the Koran to rape Danish girls?". She replied: "I am saying that the Koran allows you to use women as you like". The journalist gave her the possibility to disagree, but she stated that "I am certainly allowed to write that. I am allowed to write exactly whatever suits me. If they rape and kill other people the way they do ...". The petitioner considers that these statements are insulting and that the Danish Courts should strike the balance between the right to freedom of speech

for politicians and the prohibition against hate speech. By not bringing the case to court, the authorities violated articles 2, 4 and 6 of the Convention.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes the State party's objection that the petitioner's claims fall outside the scope of the Convention, because the statements in question are directed at persons of a particular religion or religious group, and not at persons of a particular "race, colour, descent, or national or ethnic origin". It also takes note of the petitioner's contention that the statements in question were indeed aimed at persons of Muslim or Arab background. The Committee observes, however, that the impugned statements specifically refer to the Koran, to Islam and to Muslims in general, without any reference whatsoever to any race, colour, descent, or national or ethnic origin. While the elements of the case file do not allow the Committee to analyse and ascertain the intention of the impugned statements, it remains that no specific national or ethnic groups were directly targeted as such by these oral statements as reported and printed. In fact, the Committee notes that the Muslims currently living in the State party are of heterogeneous origin. They originate from at least 15 different countries, are of diverse national and ethnic origins, and consist of non-citizens, and Danish citizens, including Danish converts.

6.3 The Committee recognizes the importance of the interface between race and religion and considers that it would be competent to consider a claim of "double" discrimination on the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin. However, this is not the case in the current petition, which exclusively relates to discrimination on religious grounds. The Committee recalls that the Convention does not cover discrimination based on religion alone, and that Islam is not a religion practised solely by a particular group, which could otherwise be identified by its "race, colour, descent, or national or ethnic origin". The *travaux préparatoires* of the Convention reveal that the Third Committee of the General Assembly rejected the proposal to include racial discrimination and religious intolerance in a single instrument, and decided in the ICERD to focus exclusively on racial discrimination.[j] It is unquestionable therefore that discrimination based exclusively on religious grounds was not intended to fall within the purview of the Convention.

6.4 The Committee recalls its prior jurisprudence in *Quereshi v. Denmark* that, "a general reference to foreigners does not at present single out a group of persons, contrary to article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent or national or ethnic origin".[k] Similarly, in this particular case, it considers that the general references to Muslims, do not single out a particular group of persons, contrary to article 1 of the Convention. It, therefore, concludes that the petition falls outside the scope of the Convention and declares it inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

6.5 Although the Committee considers that it is not within its competence to examine the present petition, it takes note of the offensive nature of the statements complained of and recalls that freedom of speech carries with it both duties and responsibilities. It takes the opportunity to remind the State party of its concluding observations, following consideration of the State party's reports in 2002 and 2006, in which it had commented and made recommendations upon: (a) the considerable increase in reported cases of widespread harassment of people of Arab and Muslim backgrounds since 11 September 2001; (b) the

increase in the number of racially motivated offences; and (c) the increase in the number of complaints of hate speech, including by politicians within the State party. It also encourages the State party to follow up on its recommendations and to provide pertinent information on the above concerns in the context of the Committee's procedure for follow-up to its concluding observations.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

(b) That this decision shall be communicated to the State party and to the petitioner.

Notes

[a] The Convention was ratified by Denmark on 9 December 1971, and the declaration under article 14 was made on 11 October 1985.

[b] The State party provides the context of this statement, by quoting the article:

"(...)

"The law that Islam lays down as the only true law is the law construed on the basis of the words of the Koran and as preached by their preachers during prayers - and the boys have never in their short lives heard any other interpretation. This is the only truth that they know, so no Danish official will ever get a chance of influencing these boys into another direction. As seen by Danish eyes, they are lost to society!

"The Danish laws cannot handle these 'misguided' young people at all, because they think we are the ones that should submit to Islam, and they are confirmed in this belief every day by their preachers and leaders. The fact that they were born in Denmark and speak Danish does not alter their fundamental attitude - whatever happens, they believe that they have a right to rape Danish girls and cut down Danish citizens indiscriminately. If they are caught and sentenced according to Danish law, it inspires them merely with scorn and contempt - they will just become real martyrs and heroes among their own people, for they have proved that they are the holy warriors who will one day take over the leadership of the ungodly underlings, the Danes.

"So where is the way forward for Denmark?

"We have to consider these young people our opponents at war and not just as disturbed young Danish boys of Muslim background, and opponents at war must be caught and rendered harmless. Our laws forbid us to kill our opponents officially so we only have the option of filling our prisons with these criminals.

"This is an extremely costly solution, and as they will never repent of their acts, they will quickly gain control of the prisons in the same way the outlaw bikers do today. We probably have to think along other lines and, for example, accept a Russian offer of keeping the petty criminals in Russian prisons for DKK 25 per day - that is far cheaper, and their possibilities of influencing their surroundings will be eliminated. Even this solution is a rather short-term one, however, because when they return again, they will just be even more determined to kill Danes.

(...)"

[c] "Section 266b.

"(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

"(2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance."

[d] See communication No. 17/1999, *B.J. v. Denmark*, Opinion adopted on 17 March 2000, paras. 2.4 to 2.6.

[e] "Section 749.

"(1) The police shall dismiss a report lodged if it deems that there is no basis for initiating investigation.

"(2) If there is no basis for continuing an investigation already initiated, the police may decide to discontinue the investigation if no charge has been made (...).

"(3) If the report is dismissed or the investigation is discontinued, those who may be presumed to have a reasonable interest therein shall be notified. The decision can be appealed to the superior public prosecutor under the rules of Part 10."

[f] "Section 96.

"(1) It is the duty of the public prosecutors, in cooperation with the police, to prosecute offences according to the rules of this Act.

"(2) The public prosecutors shall dispatch any one case at the speed permitted by the nature of the case, and shall thus ensure not only that guilty persons are held responsible, but also that prosecution of innocent persons does not occur."

[g] See above.

[h] "Section 742.

"(1) Criminal offences must be reported to the police.

"(2) The police shall institute investigations upon a report lodged or on its own initiative when it may reasonably be presumed that a criminal offence subject to prosecution has been committed."

[i] CERD/C/60/CO/5, adopted on 21 March 2002, para. 16, and CERD/C/DEN/CO/17, adopted on 18 August 2006, para. 11.

[j] General Assembly resolution 1779 (XVII), General Assembly resolution 1780 (XVII), and General Assembly resolution 1781 (XVII).

[k] See Petition No. 33/2003, Opinion adopted on 9 March 2005, para. 7.3.

Decision concerning communication No. 37/2006

Submitted by: A.W.R.A.P. (represented by counsel, the Documentation and Advisory Centre on Racial Discrimination)

Alleged victim: The petitioner

State party: Denmark

Date of communication: 6 July 2006 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 8 August 2007,

Adopts the following:

1.1 The petitioner is A.W.R.A.P., a Danish citizen born on 1 February 1954 in Sweden, now residing in Denmark, and a practising Muslim. He alleges a violation by Denmark of articles 2, paragraph 1 (d), 4 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel, Miss Line Bøgsted of the Documentary and Advisory Centre on Racial Discrimination (DACoRD).

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 20 July 2006.

Factual background

2.1 In 1997, the Danish Parliament adopted a bill abolishing the right of parents to corporally punish their children. The Danish People's Party voted against the bill. In 2005, the Government introduced a bill amending the Danish Integration Act by introducing the requirement for immigrants to sign "declarations of integration", designed to ensure improved integration of immigrants. All new immigrants would have to sign a declaration stating that they will respect the fundamental values of Danish society, including observance of the rules of the Danish Criminal Code, that they will promote the integration of their children - not least by making sure that the children attend school, that they will respect the individual's freedom and personal integrity as well as the equality of the sexes, that they will respect the freedom of religion and expression, and that they recognize the prohibition of corporal punishment of their children.

2.2 The Danish People's Party supported the amendment bill which led to a new debate concerning the ban on corporal punishment of children because a politician of the Socialist People's Party asked members of the Danish People's Party how it could support a bill demanding that all aliens sign a declaration saying, inter alia, that "corporal punishment of my children is prohibited" when the same party opposed the ban on corporal punishment of children.

2.3 On 5 November 2005, Mr. Søren Krarup, member of the National Parliament for the Danish People's Party, in relation to this debate, stated as follows:

> "The problem is that the country unfortunately has been flooded with Muslim so-called culture, and according to Islam it is the right of the male to beat his children and wife yellow and blue. That form of violence which they are practising is of

sadistic and brutal character. That is why we can not reintroduce the act (on corporal punishment) and that is why it is important to make them sign it."

2.4 On 13 November 2005, Mr. Krarup added the following to his previous statement:

"What makes it so extremely difficult in relation to discussing the right to corporal punishment today is that we have been flooded by a culture to which violence - the holy right of the male to beat up his wife and children yellow and blue - is a natural thing. And that means that the Danish tradition for corporal punishment had become more or less compromised by a Muslim tradition which is much different, but which means that ..."

2.5 Apparently, after being questioned by the interviewer on the basis for his remarks, Mr. Krarup stated that:

"Is it unknown to you that, according to Sharia and the Koran, a man has a special position requiring his wife and children to abide by his doings? And if they don't, they'll be punished?"

2.6 Having read these articles in the newspaper *Politiken*, the petitioner contacted the Documentation and Advisory Centre on Racial Discrimination (DACoRD) and asked them to file a complaint to the police on his behalf against Mr. Krarup, for violation of section 266b of the Danish Penal Code which prohibits racist statements.[b] On 15 October 2005, such a complaint was sent to the Copenhagen police. On 27 March 2006, the Police rejected it because there was no reasonable evidence to support the claim that an unlawful act had occurred.

2.7 On 7 April 2006, the petitioner filed a complaint with the Regional Public Prosecutor for Copenhagen. On 24 May 2006, the Public Prosecutor confirmed his agreement with the police decision not to prosecute Mr. Krarup. He referred to the extended freedom of speech which exists for politicians in general and members of Parliament in particular, especially when it comes to politically controversial public matters, including corporal punishment and how it is practised in other cultures. He did not find that the "statements, when read in context, appear to be threatening, demeaning or degrading in the sense of the Penal Code section 266b".

2.8 The petitioner argues that questions relating to the pursuit by the police of charges against individuals are discretionary, and that there is no possibility to bring the case before the Danish courts. Any decision by the Public Prosecutor relating to the investigation by the police departments cannot be appealed. A legal action against Mr. Krarup would not be effective, given that the police and Public Prosecutor have rejected the complaints against him. The petitioner refers to a decision of the Eastern High Court of 5 February 1999, where it was held that an incident of racial discrimination does not in itself imply a violation of the honour and reputation of a person under section 26 of the Act in Civil Liability.[c] The petitioner concludes that he has no further remedies under national law.

The complaint

3.1 The petitioner claims that the decision of the Copenhagen police not to initiate an investigation into the alleged facts violates articles 2, paragraph 1 (d); 4 (a); and 6 of the Convention, as the documentation presented should have motivated the police to investigate the matter thoroughly. There were no effective means to protect him from racist statements in this case.

3.2 The petitioner adds that the decisions of the Copenhagen police and the Public Prosecutor to reject his complaints violate article 6 of the Convention. He contends that the Danish authorities did not examine the material in full, did not take his arguments into account and did not make reference to their obligations under the Convention.

State party's observations on the admissibility and merits of the communication

4.1 On 20 July 2006, the State party made its submissions on the admissibility and merits of the communication. On admissibility, it submits that the claims fall outside the scope of the Convention and that the petitioner has failed to establish a prima facie case, for purposes of admissibility. The statements concern Mr. Krarup's perception of persons of a specific religion and of a religious doctrine but do not concern persons of a particular "race, colour, descent, or national or ethnic origin" within the meaning of article 1 of the Convention. The State party notes that not all Muslims are of a particular ethnic origin and that not all Muslims are of the same race. Even the petitioner himself referred to the statements as "offensive and degrading to persons of the Muslim faith", thus, confirming that the statements cannot be characterized as "racially discriminating" as they concern a religious and not a racial issue. For this reason, the statements fall outside the scope of article 1 of the Convention.

4.2 On the merits, the State party disputes that there was a violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention. On the claim that the documentation presented to the police should have motivated it to initiate a thorough investigation, the State party argues that the Danish authorities' evaluation of the petitioner's reports of alleged racial discrimination fully satisfies the requirements of the Convention, even though they did not produce the outcome desired by the petitioner. The Convention does not guarantee a specific outcome of cases on alleged racially insulting statements, but sets out certain requirements for the investigation of such statements. For the State party, these requirements were satisfied in the current case, as the Danish authorities did take effective action, by processing and investigating the complaints lodged by the petitioner.

4.3 Under section 749 (2) of the Administration and Justice Act,[d] the police may discontinue an investigation already initiated when there is no basis for its continuation. In criminal proceedings, the prosecutor has the burden of proof that a criminal offence was committed. It is important for the sake of due process that the evidence is of a certain weight for the courts to convict an accused. Pursuant to section 96 (2) of the Administration of Justice Act,[e] public prosecutors must observe the principle of objectivity. They cannot prosecute a person unless they believe that the prosecution will lead to conviction with a reasonable prospect of certainty.

4.4 The State party accepts that investigations must be carried out with due diligence and expeditiously and must be sufficient to determine whether or not an act of racial discrimination has taken place. It does not follow, however, that a prosecution should be initiated in all cases reported to the police. The State party emphasizes that the question in the current case was whether Mr. Krarup's statements could be considered to fall within the scope of section 266b of the Criminal Code. The State party considers that this legal assessment was thorough and adequate. There were no problems concerning evidence, as the statements were printed in the newspaper as Mr. Krarup's quotations. Thus, there was no need for the police to initiate an investigation to clarify the specific contents of the statements, to discover the originator of the statements, or to question the petitioner about his view of the statements.

4.5 In the State party's view, the prosecution service correctly balanced the right to freedom of expression, including politicians' freedom of expression in connection with

debates about essential social issues, with the right to protection of religion (or the right to protection against racial discrimination). The statements must be seen in the context in which they were made, namely as contributions to a political debate about the right of chastisement, and whether the reader supports Mr. Krarup's views or not, a democratic society must allow for a debate on such viewpoints within certain limits. The State party highlights its view that freedom of expression is particularly important for elected representatives of the people, who draw attention to their concerns and defend their interests. Thus, interference with the freedom of expression of a member of Parliament calls for close scrutiny on the part of the prosecution service.

4.6 The State party acknowledges that a politician's right to freedom of expression is not absolute, and refers to the data contained in its sixteenth and seventeenth periodic reports to the Committee, in which it informed that between 1 January 2001 and 31 December 2003, the Danish courts considered 23 cases concerning violations of section 266b of the Criminal Code, and that 10 of those cases concerned statements made by politicians, only one of whom was acquitted.

Petitioner's comments

5.1 On 29 December 2006, the petitioner commented on the State party's submissions. With respect to the argument that the communication falls outside the scope of the Covenant, the petitioner contends that Islamophobia, just like attacks against Jews, has manifested itself as a form of racism in many European countries, including Denmark. After 11 September 2001, attacks against Muslims have intensified in Denmark. Members of the Danish People's Party use hate speech as a tool to stir up hatred against people of Arab and Muslim background. In their view, culture and religion are connected in Islam. The petitioner recalls that the Committee has already concluded that Danish authorities do not ensure an effective implementation of criminal law in relation to hate speech against Muslims and Muslim culture, especially by politicians. He invokes the Committee's concluding observations on Denmark adopted in 2002 and 2006:

> "The Committee is concerned about reports of a considerable increase in reported cases of widespread harassment of people of Arab and *Muslim* backgrounds since 11 September 2001. The Committee recommends that the State party monitor this situation carefully, take decisive action to protect the rights of victims and deal with perpetrators, and report on this matter in its next periodic report."

> "The Committee, while taking note of the State party's efforts to combat hate crimes, is concerned about the increase in the number of racially motivated offences and in the number of complaints of hate speech. The Committee is also concerned about *hate speech by some politicians in Denmark*. While taking note of the statistical data provided on complaints and prosecutions launched under section 266b of the Criminal Code, the Committee notes the refusal by the Public Prosecutor to initiate court proceedings in some cases, including the case of the publication of *some cartoons associating Islam with terrorism* (arts. 4 (a) and 6)." (*emphasis added*).[f]

5.2 The petitioner concludes that he has made a prima facie case, given that he belongs to a so-called "Muslim culture" and that, as a father, he is personally affected by the stereotyping that he and other Muslims beat up their wives and children.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes the State party's objection that the petitioner's claims fall outside the scope of the Convention, because the statements in question are directed at persons of a particular religion or religious group, and not at persons of a particular "race, colour, descent, or national or ethnic origin". It also takes note of the petitioner's contention that the statements in question were indeed aimed at persons of Muslim or Arab background. The Committee observes, however, that the impugned statements specifically refer to the Koran, to Islam and to Muslims in general, without any reference whatsoever to any race, colour, descent, or national or ethnic origin. While the elements of the case file do not allow the Committee to analyse and ascertain the intention of the impugned statements, it remains that no specific national or ethnic groups were directly targeted as such by these oral statements as reported and printed. In fact, the Committee notes that the Muslims currently living in the State party are of heterogeneous origin. They originate from at least 15 different countries, are of diverse national and ethnic origins, and consist of non-citizens, and Danish citizens, including Danish converts.

6.3 The Committee recognizes the importance of the interface between race and religion and considers that it would be competent to consider a claim of "double" discrimination on the basis of religion and another ground specifically provided for in article 1 of the Convention, including national or ethnic origin. However, this is not the case in the current petition, which exclusively relates to discrimination on religious grounds. The Committee recalls that the Convention does not cover discrimination based on religion alone, and that Islam is not a religion practised solely by a particular group, which could otherwise be identified by its "race, colour, descent, or national or ethnic origin". The *travaux préparatoires* of the Convention reveal that the Third Committee of the General Assembly rejected the proposal to include racial discrimination and religious intolerance in a single instrument, and decided in the ICERD to focus exclusively on racial discrimination.[g] It is unquestionable therefore that discrimination based exclusively on religious grounds was not intended to fall within the purview of the Convention.

6.4 The Committee recalls its prior jurisprudence in *Quereshi v. Denmark* that, "a general reference to foreigners does not at present single out a group of persons, contrary to article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent or national or ethnic origin".[h] Similarly, in this particular case, it considers that the general references to Muslims do not single out a particular group of persons, contrary to article 1 of the Convention. It therefore concludes that the petition falls outside the scope of the Convention and declares it inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

6.5 Although the Committee considers that it is not within its competence to examine the present petition, it takes note of the offensive nature of the statements complained of and recalls that freedom of speech carries with it both duties and responsibilities. It takes the opportunity to remind the State party of its concluding observations, following consideration of the State party's reports in 2002 and 2006, in which it had commented and made recommendations upon: (a) the considerable increase in reported cases of widespread harassment of people of Arab and Muslim backgrounds since 11 September 2001; (b) the increase in the number of racially motivated offences; and (c) the increase in the number of complaints of hate speech, including by politicians within the State party. It also encourages the State party to follow up on its recommendations and to provide pertinent information on

the above concerns in the context of the Committee's procedure for follow-up to its concluding observations.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

(b) That this decision shall be communicated to the State party and to the petitioner.

Notes

[a] The Convention was ratified by Denmark on 9 December 1971, and the declaration under article 14 was made on 11 October 1985.

[b] According to Section 266b "(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years. (2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance."

[c] See communication No. 17/1999, *B.J. v. Denmark*, Opinion adopted on 17 March 2000, paras. 2.4 to 2.6.

[d] "Section 749.

"(1) The police shall dismiss a report lodged if it deems that there is no basis for initiating investigation.

"(2) If there is no basis for continuing an investigation already initiated, the police may decide to discontinue the investigation if no charge has been made (...).

"(3) If the report is dismissed or the investigation is discontinued, those who may be presumed to have a reasonable interest therein shall be notified. The decision can be appealed to the superior public prosecutor under the rules of Part 10."

[e] "Section 96.

"(1) It is the duty of the public prosecutors, in cooperation with the police, to prosecute offences according to the rules of this Act.

"(2) The public prosecutors shall dispatch any one case at the speed permitted by the nature of the case, and shall thus ensure not only that guilty persons are held responsible, but also that prosecution of innocent persons does not occur."

[f] CERD/C/60/CO/5, adopted on 21 March 2002, para. 16, and CERD/C/DEN/CO/17, adopted on 18 August 2006, para. 11.

[g] General Assembly resolution 1779 (XVII), General Assembly resolution 1780 (XVII), and General Assembly resolution 1781 (XVII).

[h] See Petition No. 33/2003, Opinion adopted on 9 March 2005, para. 7.3.

Opinion concerning communication No. 40/2007

Submitted by: Murat Er (represented by counsel)

Alleged victim: The petitioner

State party: Denmark

Date of communication: 20 December 2006 (initial submission)

Date of opinion: 8 August 2007

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 8 August 2007,

Having concluded its consideration of communication No. 40/2007, submitted to the Committee on the Elimination of Racial Discrimination on behalf of Mr. Murat Er under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the petitioner of the communication, his counsel and the State party,

Adopts the following:

Opinion

1. The communication, dated 20 December 2006, is submitted by Mr. Murat Er, a Danish citizen of Turkish origin born in 1973. He claims that Denmark has violated article 2, paragraph 1 (d); article 5, paragraph (e) (v), and article 6 of the Convention. He is represented by counsel, Ms. Line Bøgsted.

Factual background

2.1 The petitioner was a carpenter student at Copenhagen Technical School at the time of the events. As part of the study programme, students were offered the possibility of doing traineeships in private companies. On 8 September 2003, the petitioner accidentally saw a note in a teacher's hands, where the words "not P" appeared next to the name of a potential employer applying for trainees to work in his company. When asked about the meaning of that note, the teacher explained to him that the P stood for "perkere" ("Pakis") and that it meant that the employer in question had instructed the school not to send Pakistani or Turkish students for training in that company. That same day, the petitioner complained orally to the school inspector, arguing that the school collaborated with employers that did not accept trainees of a certain ethnic origin. The inspector stated that it was the school's firm policy "not to accommodate wishes from employers only to accept ethnic Danes as trainees" and that he was not aware of cases where this had happened. On 10 September 2003, the petitioner filed a written complaint with the school management board. He claims that ever since his complaint was filed, he has been treated badly by school staff and students and was assigned to projects which he would normally not be expected to carry out at the school.

2.2 From October to December 2003, the petitioner worked as a trainee in a small carpenter business. Upon his return to the school, he was informed that he had to start a new traineeship with another company four days later, although he was enrolled in a course that started two weeks later. A journeyman, with whom he worked at this new company informed him that the school had asked the company if it would accept to send "a Black". Back at the school, he started a new course. On the second day of the course, he asked the teacher for help with some drawings, which he did not obtain. He contends that the frustration experienced as a result of the discriminatory treatment received at the school led to his dropping the course and becoming depressive. He sought medical help and was referred to Bispebjerg Hospital, where he was treated with antidepressants. He abandoned the idea of becoming a carpenter and started working as a home carer.

2.3 The petitioner contacted an independent institution, the Documentation and Advisory Centre on Racial Discrimination (DACoRD), and asked for assistance. He complained that the school had agreed to the employer's request and stated that he had experienced reprisals from the school staff since he had complained about this. DACoRD then filed a complaint on behalf of the petitioner to the Complaints Committee on Ethnic Equal Treatment (established under Act No. 374, of 28 May 2003, on Ethnic Equal Treatment), arguing that the school's practice consisting in agreeing to employers' requests to send only trainees of Danish origin constituted direct discrimination.

2.4 The Complaints Committee examined the case and exchanged correspondence with the school and with DACoRD. In the correspondence, the school admitted that unequal treatment based on ethnicity might have occurred in isolated cases, but that this was not the general practice of the school. By decision of 1 September 2004, the Complaints Committee considered that, in that particular case, a staff member of the school had followed discriminatory instructions and thus violated section 3 of the Danish Act on Ethnic Equal Treatment. It specified, however, that section 3 was not violated by the school as such. The Complaints Committee further considered that section 8 of the referred Act (prohibition of reprisals for complaints aimed at enforcing the principle of equal treatment) did not appear to have been violated, although it noted that it did not have the competence to interrogate witnesses where evidence was lacking. It concluded that this issue was for the Danish tribunals to determine and recommended that free legal aid be granted for the case to be brought before a court.

2.5 A civil claim was filed in the City Court of Copenhagen, seeking compensation of DKK 100,000 (€13,500 approximately) for moral damages incurred as a result of ethnic discrimination. On 29 November 2005, the City Court considered that the evidence produced did not prove that either the school or its staff members were willing to meet discriminatory requests from employers and that therefore, there was no reason to set aside the inspector's statement. It further found that the petitioner was not among the students to whom a traineeship was to be allocated on 8 September 2003 as he was undergoing an aptitude test between 1 September and 1 October after having failed the first main course, and could only subsequently be considered for a traineeship, which he obtained as of 6 October 2003. It concluded that the petitioner could not be considered to have been subjected to differential treatment on the basis of his race or ethnic origin, nor that he was a victim of reprisals by the defendant because of the complaint filed by him. The petitioner contends that under the Act on Ethnic Equal Treatment the burden of proof should have been on the staff member and not on him.

2.6 The petitioner appealed the judgement of the Copenhagen City Court to the High Court of Eastern Denmark. He did not obtain legal aid to appeal the case and DACoRD subsequently assisted him to appeal the case. One of the witnesses called before the High Court was a school staff member in charge of contacts between the school and potential

employers. He stated that he had chosen not to send a student of ethnic origin other than Danish to the company, because "the school had received before negative feedbacks from students of other ethnic origin who had been training with the company. They had felt maltreated because employees at the company had used abusive language". The school argued that the complainant had not experienced reprisals as a consequence of his complaint, but that he simply was not qualified enough to be sent for training. In the petitioner's view, this argumentation is irrelevant, since the school had already admitted to have refrained from sending students of an ethnic background other than Danish to certain employers. The High Court decided that it had not been proved that the complainant had been subjected to discrimination or had experienced reprisals as a consequence of his complaint and confirmed the judgement of the City Court. According to the complainant, the High Court based its decision on the statement made by the school that the complainant did not have the necessary qualifications to be sent to training. The school was acquitted and the complainant was required to pay the procedural costs amounting to DKK 25,000 (€3,300 approximately). This amount was covered by DACoRD.

2.7 Under Danish law, a case can only be tried twice before national courts. If the case is of significant importance, there is the possibility to apply for leave to appeal to the Supreme Court. After the judgement of the High Court of Eastern Denmark, the complainant indeed applied for leave to appeal. On 5 December 2006, his application was dismissed.

The complaint

3.1 The petitioner claims that Denmark has violated article 2, paragraph 1 (d); article 5 (e) (v); and article 6 of the Convention.

3.2 He contends that, as a consequence of the school's discriminatory practice, he was not offered the same possibilities of education and training as his fellow students and no remedies were allegedly available to address this situation effectively, in violation of article 5 (e) (v) of the Convention. Furthermore, he experienced a financial loss as a result of national procedures.

3.3 The petitioner claims that Danish national legislation does not offer effective protection to victims of discrimination based on ethnicity, as required by article 2, paragraph 1 (d) of the Convention, and does not meet the requirements of article 6. According to the petitioner, this resulted in his claims being dismissed. He further claims that the legislation is not interpreted by Danish courts in accordance with the Convention, since the concept of shared burden of proof and the right to obtain an assessment of whether discrimination based on ethnicity has taken place are not enforced.

State party's observations on the admissibility and merits of the communication

4.1 On 17 April 2007, the State party submitted observations on the admissibility and merits of the case. It claims that the communication is inadmissible *ratione personae* because the petitioner is not a "victim" for the purposes of article 14 of the Convention. It refers to the Human Rights Committee's case law on article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights on "victim status".[8] Under this case law, the victim must show that an act or an omission of a State party has already adversely affected his or her enjoyment of a right or that such an effect is imminent, for example, on the basis of existing law and/or judicial or administrative practice. The State party submits that its alleged failure to provide effective protection and effective remedies against the reported act of racial discrimination does not constitute and imminent violation of the petitioner's rights under the articles of the Convention invoked.

4.2 The State party claims that the complaint is based on the Copenhagen Technical School's alleged practice of complying with discriminatory requests from certain employers who apparently refused to accept trainees with an ethnic origin other than Danish for traineeships. However, the State party contends that the petitioner was never in a position where he was directly and individually subjected to and/or affected by this alleged discriminatory practice and therefore has no legal interest in contesting it. It notes that the reason why the applicant did not start his traineeship in September 2003 was, as established by both the Copenhagen City Court and the High Court of Eastern Denmark, solely his lack of professional qualifications. He had failed the examination after his first year of training and was thus ineligible for a traineeship in September 2003 but had to undergo a one-month aptitude test at the school. It concludes that the school's treatment of the applicant with regard to the traineeship was merely based on objective criteria. In the State party's view, this statement is confirmed by the fact that the petitioner started a traineeship on 6 October 2003, after having completed the relevant aptitude test.

4.3. The State party maintains that, even if it were concluded that the school and/or certain staff members acted in a racially discriminatory manner in some cases when allocating traineeships to students, there was no discrimination in the petitioner's case and had thus no existing or imminent effects on the applicant's enjoyment of his rights under the Convention.

4.4 On the merits, the State party contends that both the protection offered to the applicant and the remedies available to address his claim of racial discrimination fully satisfy the Convention's requirements under articles 2, paragraph 1 (d); 5 (e) (v) and 6. It notes that the Convention does not guarantee a specific outcome of the complaints of alleged discrimination but rather sets out certain requirements for the national authorities' processing of such cases. The judgements of both the City Court and the High Court are based on the Danish Act on Ethnic Equal Treatment, which offers comprehensive protection against racial discrimination under Danish law. It notes that this Act entered into force on 1 July 2003 to implement EU Council Directive 2000/43/EC, yet it is not the only instrument that recognizes the principle of equal treatment. The State party adapted its legislation back in 1971 to meet its obligations pursuant to the Convention.[b]

4.5 According to the State party, the petitioner's submissions, particularly his claims under article 2, paragraph 1 (d) and article 6 of the Convention, are phrased in abstract and general terms. It recalls the Human Rights Committee's established practice that, when examining individual complaints under the Optional Protocol, it is not its task to decide in abstract whether or not the national law of a State party is compatible with the Covenant, but only to consider whether there is or has been a violation of the Covenant in the particular case submitted to it.[c] It further recalls that the issue is to determine whether the applicant was offered effective protection and remedies against an alleged and concrete act of racial discrimination. It considers that the more general and abstract issues raised by the petitioner should more rightly be dealt with by the Committee in connection with the examination of Denmark's periodic report under article 9 of the Convention.

4.6 The State party recalls that article 2, paragraph 1 (d), is a policy statement and that the obligation contained therein is, by its nature, a general principle. In the State party's view, this article does not impose concrete obligations on the State party and, even less, specific requirements on the wording of a possible national statute on racial discrimination. On the contrary, States parties enjoy a significant margin of appreciation in this regard. Concerning article 5 (e) (v), the State party notes that, although being more concrete in obliging States parties to guarantee equality before the law in relation to education and training, it also leaves a significant margin of appreciation to them with regard to the implementation of this obligation.

4.7 The State party notes that the Act on Ethnic Equal Treatment offers individuals a level of protection against racial discrimination which, in certain aspects such as the rule of shared burden of proof in section 7 and the explicit protection against victimization in section 8, goes further than the protection required by the Convention. It notes that this law was effectively implemented by both national courts in examining the petitioner's case. It further notes that both the City Court and the High Court thoroughly assessed the evidence submitted and heard the petitioner and all key witnesses. Therefore, these Courts had an adequate and informed basis for assessing whether the petitioner had been a victim of racial discrimination. The State party adds that the petitioner's complaint was also examined by the Complaints Committee for Ethnic Equal Treatment and, even if this does not constitute an "effective remedy" within the meaning of article 6, by the Technical School at a manager's meeting, which resulted in a warning to the training instructor and a written reply to the petitioner.

4.8 According to the State party, the fact that the applicant was not granted legal aid in the High Court proceedings does not imply that these proceedings cannot be considered an effective remedy.

4.9 With regard to the petitioner's claim that the Danish courts do not interpret Danish legislation in accordance with the Convention, the State party notes that this is a general statement and does not refer to the petitioner's own case.[d] It further notes that, in any event, it is not the Committee's task to review the interpretation of Danish law made by national courts. Nevertheless, the State party contends that in the petitioner's case both national courts delivered reasoned decisions and applied the rule of shared burden of proof. It recalls that this rule, recognized in section 7 of the Danish Act on Ethnic Equal Treatment, provides for a more favourable burden of proof for alleged victims of discrimination than the Convention. It provides that if a person presents facts from which it may be presumed that there has been direct or indirect discrimination, it is incumbent on the other party to prove that there has been no breach of the principle of equal treatment. By contrast, under the Convention, it is up to the applicant to provide prima facie evidence that he or she is a victim of a violation of the Convention.[e] The State party concludes that the fact that the petitioner's complaint under the Act invoked was unsuccessful does not imply that this instrument is ineffective.

Petitioner's comments

5.1 On 28 May 2007, the petitioner challenged the State party's argument that because he did not prove that he was more qualified than the 14 students who obtained a traineeship in September 2003 he could not be considered a victim. He notes that when a traineeship was earmarked for "Danes", the number of traineeships left to students of non-Danish origin was reduced accordingly, being discriminated de facto irrespective of whether they could in the end obtain one of the remaining internships or not. He claims that this fact was not taken into consideration by the High Court, which only decided on the issue of whether the petitioner was qualified and thus eligible for the traineeship in September 2003. He contends that by not making any assessment on whether or not racial discrimination took place, the Danish Court violated his right to an effective remedy guaranteed by articles 2 and 6, in relation to article 5 (e) (v), of the Convention.

5.2 The petitioner contends that the fact that the teacher at the Copenhagen Technical School admitted before the High Court that he chose not to send a student of non-Danish origin to the company shows that the principle of equal treatment was violated.

Issues and proceedings before the Committee

Decision on admissibility

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes the State party's allegation that the communication is inadmissible *ratione personae* because the petitioner does not qualify as a victim under article 14 of the Convention. It further notes the Human Rights Committee's Views invoked by the State party with regard to the "victim status" and the State party's contention that the petitioner was not individually affected by the school's alleged discriminatory practice of complying with employers' requests to exclude non-ethnic Danish students from being recruited as trainees because he did not qualify for a traineeship in September 2003 and that he therefore has no legal interest in contesting it.

6.3 The Committee does not see any reason not to adopt a similar approach to the concept of "victim status" as in the Human Rights Committee's Views referred to above, as it has done on previous occasions.[f] In the case under examination, it notes that the existence of an alleged discriminatory school practice consisting in fulfilling employers' requests to exclude non-ethnic Danish students from traineeships would be in itself sufficient to justify that all non-ethnic Danish students at the school be considered as potential victims of this practice, irrespective of whether they qualify as trainees according to the school's rules. The mere fact that such a practice existed in the school would be, in the Committee's view, enough to consider that all non-ethnic Danish students, who are bound to be eligible for traineeships at some point during their study programme, be considered as potential victims under article 14, paragraph 1, of the Convention. Therefore, the Committee concludes that the petitioner has established that he belongs to a category of potential victims for the purposes of submitting his complaint before the Committee.

Consideration on the merits

7.1 The Committee has considered the petitioner's case in the light of all the submissions and documentary evidence produced by the parties, as required under article 14, paragraph 7 (a), of the Convention and rule 95 of its rules of procedure. It bases its findings on the following considerations.

7.2 The petitioner claims that Danish national legislation does not offer effective protection to victims of ethnic discrimination as required by article 2, paragraph 1 (d), of the Convention, and that Danish courts do not interpret national legislation in accordance with the Convention. The Committee notes the State party's allegation that the petitioner's claims are abstract and do not refer to his own case. It considers that it is not the Committee's task to decide in abstract whether or not national legislation is compatible with the Convention but to consider whether there has been a violation in the particular case.[g] It is also not the Committee's task to review the interpretation of national law made by national courts unless the decisions were manifestly arbitrary or otherwise amounted to a denial of justice.[h] In light of the text of the judgements of both the City Court of Copenhagen and the High Court of Eastern Denmark, the Committee notes that the petitioner's claims were examined in accordance with the law that specifically regulates and penalizes acts of racial or ethnic discrimination and that the decisions were reasoned and based on that law. The Committee therefore considers that this claim has not been sufficiently substantiated.

7.3 In respect of the author's claim that, as a result of the school's practice, he was not offered the same possibilities of education and training as his fellow students, the Committee observes that the uncontroversial fact that one of the teachers at the school admitted having accepted an employer's application containing the note "not P" next to his name and knowing that this meant that students of non-Danish ethnic origin were not to be sent to that company for traineeship is in itself enough to ascertain the existence of a de facto discrimination towards all non-ethnic Danish students, including the petitioner. The school's allegation that the rejection of the petitioner's application for traineeship in September 2003 was based on his academic record does not exclude that he would have been denied the opportunity of training in that company in any case on the basis of his ethnic origin. Indeed, irrespective of his academic record, his chances in applying for an internship were more limited than other students because of his ethnicity. This constitutes, in the Committee's view, an act of racial discrimination and a violation of the petitioner's right to enjoyment of his right to education and training under article 5, paragraph e (v) of the Convention.

7.4 With regard to the petitioner's allegation that the State party failed to provide effective remedies within the meaning of article 6 of the Convention, the Committee notes that both national Courts based their decisions on the fact that he did not qualify for an internship for reasons other than the alleged discriminatory practice against non-ethnic Danes, namely, that he had failed a course. It considers that this does not absolve the State party from its obligation to investigate whether or not the note "not P" written on the employer's application and reported to be a sign recognized by a schoolteacher as implying exclusion of certain students from a traineeship on the basis of their ethnic origin, amounted to racial discrimination.[i] In the light of the State party's failure to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, the Committee concludes that articles 2, paragraph 1 (d), and 6 of the Convention have been violated.

8. In the circumstances, the Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted disclose a violation of articles 2, paragraph 1 (d); 5, paragraph (e) (v); and 6 of the Convention by the State party.

9. The Committee recommends that the State party grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The State party is also requested to give wide publicity to the Committee's Opinion, including among prosecutors and judicial bodies.

10. The Committee wishes to receive, within 90 days, information from the Government of Denmark about the measures taken to give effect to the Committee's Opinion.

Notes

[a] The State party invokes the Human Rights Committee's Views in *E.W. et al v. the Netherlands* (Communication No. 429/1990), adopted on 8 April 1993, para. 6.4; *Bordes and Temeharo v. France* (Communication No. 645/1995), adopted on 22 July 1996, para. 5.5; and *Aalbersberg et al v. the Netherlands* (Communication No. 1440/2005), adopted on 12 July 2006, para. 6.3.

[b] The State party refers to its initial and second reports (CERD/C/R.50/Add.3 and CERD/C/R.77/Add.2).

[c] The State party refers to the Human Rights Committee's Views in *Maclsaac v. Canada* (Communication No. 55/1979), adopted on 14 October 1982, para. 10.

[d] The State party invokes the Committee's Views in *Michel Narrainen v. Norway* (Communication No. 3/1991), adopted on 15 March 1994, paras. 9.4 and 9.5.

[e] The State party invokes the Committee's Views in *C.P. v. Denmark* (Communication No. 5/1994), adopted on 15 March 1995, paras. 6.2 and 6.3; and *K.R.C. v. Denmark* (Communication No. 23/2002), adopted on 14 August 2002, para. 6.2.

[f] In this regard, see the Committee's opinion in *The Jewish Community of Oslo and Others v. Norway* (Communication No. 30/2003), adopted on 15 August 2005, para. 7.3 *in fine*.

[g] See the Human Rights Committee's Views in *MacIsaac v. Canada* (Communication No. 55/1979), adopted on 14 October 1982, para. 10.

[h] See the Human Rights Committee's Views in Communications Nos. 811/1998, *Mulai v. Republic of Guyana*, para. 5.3; 867/1999, *Smartt v. Republic of Guyana*, para. 5.7; 917/2000, *Arutyunyan v. Uzbekistan*, para. 5.7, among others.

[i] In this regard, see the Committee's Opinion in *Mohammed Hassan Gelle v. Denmark*, Communication No. 34/2004, adopted on 6 March 2006, para. 7.5.

Annex VI

FOLLOW-UP INFORMATION PROVIDED IN RELATION TO CASES IN WHICH THE COMMITTEE ADOPTED RECOMMENDATIONS

This annex compiles information received on follow-up to individual communications since the last annual report (A/61/18), as well as any decisions made by the Committee on the nature of those responses.

State party	Denmark
Case and No.	Mohammed Hassan Gelle, 34/2004
Opinion adopted on	6 March 2006
Issues and violations found	Racial discriminatory statements made by a member of Parliament against individuals of Somali origin - articles 2, paragraph 1 (d), 4, and 6.
Remedy recommended	Adequate compensation; to ensure that the existing legislation is effectively applied so that similar violations do not occur in the future.
Date of examination of report(s) since adoption	Sixteenth and seventeenth periodic reports examined on 9 and 10 August 2006
Due date for State party response	6 September 2006
Date of reply	31 May 2007 (the State party had previously responded on 11 September 2006)
State party response	On 11 September 2006, the State party submitted that with respect to the remedy of compensation, it considered it reasonable to pay compensation for any equitable costs a petitioner may have to pay for legal assistance during the complaints procedure. In fact, legal aid is provided in such cases. It stated that the petitioner has applied for legal aid and that he has been granted DKK 40,000 (US$ 6,670). An additional application for further legal aid is being processed. The State party also considered it reasonable that compensation be awarded for any pecuniary damage (economic damages) to the petitioner. However, the petitioner had not suffered any pecuniary damage in this case. It was of the view that the alleged discriminatory action against the petitioner in the current case has not been of such a nature that it considers it reasonable to award compensation for moral damage (non-pecuniary damage - "pain and suffering"). Unlike the discriminatory action which had taken place in *L.K. v. the Netherlands* and *Habassi v. Denmark*, the action in the current case was not aimed at the petitioner personally. Thus, the State party considered that the finding of a violation in itself was sufficient satisfaction for the petitioner in the current case.

State party	Denmark (*continued*)
State party response (*continued*)	As to the recommendation to ensure that the existing legislation is effectively applied so as to avoid similar violations in the future, the State party stated that the Department of Public Prosecution (DPP) was superior to the other prosecutors whom he supervises and has issued guidelines on keeping the DPP informed of all reports of violations of section 266b of the Criminal Code (deals with discriminatory utterances). The DPP was currently re-evaluating these guidelines and considering whether there was a basis for changing them. For this reason, the DPP has received a copy of the Committee's Opinion and has been requested to take it into consideration when assessing the need to amend the guidelines. As to publicizing the Opinion, the Government forwarded it to the Chief of Police in Copenhagen and the Regional Public Prosecutor of Copenhagen, to the DPP, the National Commissioner of Police, the Danish Association of Chiefs of Police, and the Danish Court Administration. It also received widespread coverage in the Danish media. On 31 May 2007, the State party commented on the petitioner's response, confirming its previous position and also stating the following: (1) as to the analogy drawn with *Habassi*, the State party recalls that the Committee did not specifically recommend compensation for moral injury in that case and that the Committee regarded its response as satisfactory; (2) the issue of whether a particular discriminatory act was aimed at the petitioner personally is only one aspect of the issue of compensation, which also includes whether the act had substantial consequences for the petitioner; (3) the petitioner was not mentioned by name in the letter to the editor which formed the basis of the complaint - only the names of the organizations were mentioned; (4) the requirement of legal interest as a condition for appealing a decision by the police is not identical to the requirement of being personally targeted by a discriminating act to obtain compensation for non-pecuniary damage - the former is based on the Danish Administration of Justice Act and general principles of administrative law, and the latter is based on considerations regarding the law of torts; (5) equally, the question of being a victim under the Convention of such an act and of being personally targeted by this act are not identical, thus a person found to be a victim by the Committee is not automatically entitled to compensation for non-pecuniary damage; (6) the State party does not agree that the accusation that the petitioner supports female genital mutilation is implied from the statement made by

State party	Denmark (*continued*)
State party response (*continued*)	Pia Kjærsgaard and thus the Danish authorities were not called upon to make any acknowledgement as to the truth or otherwise of the accusation. The State party does stress that it has no reason to believe that the petitioner supports female genital mutilation; the Convention does not contain a provision on compensation like the European Convention on Human Rights, but even the European Court, in awarding compensation, assesses the nature and seriousness of the violation and often rejects claims of non-pecuniary damage.
Petitioner's response	On 14 November 2006, the petitioner commented on the State party's response of 11 September 2006 and referred to its argument that it is only if a person is personally targeted in relation to a violation of the Convention that this person will be entitled to non-pecuniary damage. He argued that he was personally targeted as chairman of the Somalian organization that received the Bill in question for comments. He was in fact the person who was compared with "rapists" and "paedophiles". This fact was confirmed by the State party by its dismissal of his complaint on the grounds that politicians have a wide freedom of speech on political issues rather than on the grounds that the petitioner was not personally affected and thus had no "legal interest". It was further confirmed by the State party in its failure to bring up this argument to the Committee prior to consideration of the case. The petitioner claimed that he had been humiliated not only by the offending statement in question but also by the failure of the State party's authorities to acknowledge that the accusation that he supported female genital mutilation was false.
Committee's decision	The Committee considers that the State party has provided a satisfactory response, including by explicitly acknowledging that the petitioner does not support female genital mutilation. Furthermore, the Committee notes that the petitioner has been provided with adequate compensation in having been paid his legal costs.
State party	Norway
Case and No.	The Jewish Community of Oslo, 30/2003
Opinion adopted on	15 August 2005
Issues and violations found	Failure to protect against dissemination of ideas, "hate speech" - articles 4 and 6.
Remedy recommended	The Committee recommends that the State party take measures to ensure that statements such as those made by Mr. Sjølie in the course of his speech are not protected by the right to freedom of speech under Norwegian law.

State party	Norway (*continued*)
Remedy recommended (*continued*)	The Committee wishes to receive, within six months, information from the State party about the measures taken in the light of the Committee's opinion. The State party is requested also to give wide publicity to the Committee's opinion.
Date of examination of report(s) since adoption	Seventeenth and eighteenth reports examined on 10 and 11 August 2006
Due date for State party response	22 August 2005
Date of reply	26 May 2006 (the State party responded on 21 February 2006)
State party response	On 21 February 2006, the State party informed the Committee that the Norwegian Government gave wide publicity to the opinion in the following forms: press statement issued by the Ministry of Justice and the Police, in which the Ministry referred to several legislative developments providing enhanced protection against racist statements; media coverage; translation of the opinion on the Ministry's website; seminar and information circular on the opinion and implications for Norwegian law. In addition, the State party reiterated information provided on the merits to the effect that article 100 of the Constitution on freedom of expression was amended by the Storting on 30 September 2004 and entered into force immediately. The new provision allows for punishment of racist utterances to a greater extent than at the time of Mr. Sjølie's speech. Secondly, it stated that section 135 (a) of the Norwegian Penal Code, which criminalizes racist utterances, was amended twice since the *Sjølie* case. Both amendments have broadened the purview of section 135 (a), thus providing stronger protection against racist utterances. Thirdly, the Convention was incorporated into Norwegian law. In addition, the State party informed the Committee that a new Act No. 33 of 3 June 2005, on prohibition of discrimination on the basis of ethnicity, national origin, ancestry, skin colour, language, and religious and ethical orientation (the Discrimination Act), which provides protection additional to section 135 (a) against discrimination on the basis of racism, was enacted. The State party referred to the establishment of the Equality and Anti-discriminatory Ombudsman on 1 January 2006, which will contribute to the enforcement of laws protecting against racism. His/her mandate is to promote equality and combat discrimination on the basis of, inter alia, ethnic origin. Considering these new developments, the State party stated that it was convinced that statements such as those made by the petitioner in this case will be penalized in the future and considers that it has complied with the Committee's opinion.

State party	Norway (*continued*)
State party response (*continued*)	On 26 May 2006, the Norwegian Equality and Anti-Discrimination Ombudsman, who had been given specific responsibility to monitor the implementation of the Convention in Norwegian law and public governance, commented on the above-mentioned submission. While recognizing the efforts made to date by the State party to provide a remedy to give effect to the Committee's decision, the Ombudsman sets out further improvements that can be made. Despite amendments to Norwegian law, the Ombudsman submits that it is still necessary to secure effective enforcement of section 135 (a) in the Penal Code, especially through the education of the police and the prosecuting authorities. The Ombudsman does not have the authority to enforce the prohibition on racist speech in the Penal Code, section 135 (a). As the Anti-Discrimination Act, section 5, only protects against racist speech directed against one or several specifically named individuals, his/her authority to enforce protection against racist speech is limited to specific episodes of individual harassment, and does not extend to generalized racist speech directed against groups of people. There is still need for clarification on the provisions of section 135 (a) of the Penal Code to ensure that it covers all aspects of article 4 (a) of the Convention. The Convention should be incorporated under the Human Rights Act of 1999 like the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. It was instead incorporated under the Anti-Discrimination Act which, according to the Ombudsman, may lead to conflicts with regard to interpretation of the Convention and other Norwegian laws.
Petitioner's response	On 8 May 2006, the petitioner submitted that the State party's undertakings under article 4 must be followed up in practice, in particular by the prosecuting authority. The State party does not confirm that the prosecuting authority's practice has been amended, or that racist speeches like Mr. Sjølie's will be prosecuted in the future. He suggests that legislative initiatives aimed at clarifying the text in section 135 (a) of the Penal Code would be welcomed and that, while acknowledging that seminars have been held, the Government's submission does not explain how the prosecuting authority intends to educate the police and prosecutors in this particular field.
State party	Serbia
Case and No.	Dragan Durmic, 29/2003
Opinion adopted on	6 March 2006
Issues and violations found	Failure to examine arguable claim and to investigate claim promptly, thoroughly and effectively - articles 5 (f) and 6
Remedy recommended	Just and adequate compensation commensurate with the moral damage he has suffered; to take measures to ensure that the police, public prosecutors and the Court of Serbia and Montenegro properly investigate accusations and complaints related to acts of racial discrimination, which should be punishable by law.

State party	Serbia (*continued*)
Date of examination of report(s) since adoption	Not yet due
Due date for State party response	11 September 2006
Date of reply	6 February 2007
State party response	The State party informed the Committee that the petitioner has been informed of his right to seek compensation through the courts for the violation found by the Committee and the possibility of reaching a settlement on the amount of compensation out of court. It also informs the Committee that the Public Prosecutor's Office, prompted by the Committee's Opinion, is currently analysing at the district prosecutors' offices the incidences and nature of criminal offences which the State party admits were to a certain extent tolerated between 2000 and 2005. The study will look into incidents of violations of human rights which have not been punished so that individuals may obtain some kind of redress through extraordinary remedies available before the Supreme Court. It notes that criminal offences on grounds of racial discrimination have been on the decline in Serbia between 2003 and 2005. On 13 November 2006, an Inter-Agency Working Group was established with the task of processing individual communications before the treaty bodies and proposing amendments to national legislation with a view to introducing other mechanisms for proper implementation of the opinions of the United Nations treaty bodies.
State party	Slovakia
Case and No.	Anna Koptova, 13/1998
Opinion adopted on	8 August 2000
Issues and violations found	Equal right to movement and residence for Roma - article 5 (d) (1)
Remedy recommended	The Committee recommends that the State party take the necessary measures to ensure that practices restricting the freedom of movement and residence of Roma under its jurisdiction are fully and promptly eliminated.
Date of examination of report(s) since adoption	Second and third reports on 3 and 4 August 2000 Fourth and fifth reports on 9 and 10 August 2004
Due date for State party response	None
Date of reply	7 May 2007 (the State party had previously responded on 5 April 2001)

State party	Slovakia (*continued*)
State party response	On 5 April 2001, the State party had forwarded the text of a proclamation of the Committee for Human Rights and Nationalities of the National Council of the Slovak Republic, which stated, inter alia, "that the government of the Slovak Republic, other public authorities, as well as the Committee for Human Rights and Nationalities of the National Council of the Slovak Republic already before the publication of the opinion of the United Nations Committee on the Elimination of Racial Discrimination started taking specific measures in the field of legislature, as well as in the interest of providing suitable accommodation for the Romany families staying in provisional dwellings in the cadastre of the village of Cabiny. The Committee esteems the decision of the Government to free up funds for the reconstruction of a building in Medzilaborce, where social benefit flats for the families concerned will be created". This information was presented in the Committee's annual report to the General Assembly at its fifty-sixth session (A/56/18). The Committee made no comment on the information provided. Following a request from the Committee for an update on the implementation of this case, the State party responded on 7 May 2007, that resolutions Nos. 21 and 22 which were the subject matter of the complaint had been abolished, that freedom of movement and residence was guaranteed under article 23 of the Constitution, that it had adopted an Anti-Discrimination Act which was considered in August 2004 during the consideration of its fourth and fifth periodic reports, and that since 2000 the State party has continued to issue National Action Plans for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance. For these reasons, it considered that it has satisfactorily taken into account the Committee's Opinion.
State party	Slovakia
Case and No.	Mrs. L.R. et al., 31/2003
Opinion adopted on	7 March 2005
Issues and violations found	Municipal Council's act of cancelling its resolution to build low-cost housing for Roma racially discriminatory - articles 2, 1 (a), 5 (d) (iii), and 6.
Date of examination of report(s) since adoption	
Due date for State party response	6 June 2005

State party	Slovakia (*continued*)
Date of reply	7 May 2007 (the State party had responded on 9 June 2005)
State party response	On 9 June 2005, the State party provided its follow-up observations stating that the Opinion had been translated and distributed to relevant government offices and State authorities, including municipalities and the National Centre for Human Rights; in particular, the Opinion had been transmitted to the town of Dobšiná and the Roznava District Prosecutor, pointing out that the Slovak Republic had the obligation to provide the petitioners with an effective remedy, and that measures should be taken to return the petitioners to the situation they were in when the Municipal Council of Dobšiná adopted the first resolution. On 26 April 2005 the Municipal Council, taking into consideration the Committee's Opinion, decided to cancel both resolutions and reached an agreement that it would become engaged in proposals related to low-cost housing in the concerned area. In that context, the Council would pay serious attention to the housing problems of the Roma community with a view to the practical realization of their right to housing. Regarding the alleged discriminatory petition of the inhabitants of Dobšiná, legal proceedings had been initiated against the five-member "petition committee", under section 198 (a) of the Penal Code (inciting to ethnic or racial hatred). On 7 May 2007, and following the Committee's request of 8 March 2006 to comment on the petitioner's response of 22 July 2005, the State party informed the Committee that the Municipal Council of Dobšiná had passed a resolution (No. 20-1/III-2007-MsZ) on 1 March 2007, which approved a new zoning plan for the town, including the identification of a location for the construction of low-cost housing. In its view, the town of Dobšiná has fulfilled its obligation to make the construction of social housing possible, thus satisfying the Committee's recommendation.
Petitioner's response	By letter of 22 July 2005, counsel commented on the State party's reply of 9 June 2005. He noted that, notwithstanding that the Municipal Council of Dobšiná was under the obligation to "take measures to ensure that the petitioners are placed in the same position that they were in upon adoption of the first [housing] resolution", the Council's new resolution, which wrongly cancelled both housing resolutions (Nos. 251-20/III-2002-MsZ and 288/5/VIII-2002-MsZ) on 26 April 2005, only makes a passing reference to the Committee's Opinion without creating the conditions necessary for the long-term resolution of the Roma's housing situation in the municipality. According to counsel, the petitioners were thus worse off than before. A municipal councillor allegedly went on record to state that the facts "had been examined by all relevant state authorities and [did not prove] any violation of the rights of any particular group". A meeting with the

State party	Slovakia (*continued*)
Petitioner's response (*continued*)	Deputy Mayor on 18 July 2005 disclosed additional problems: the Council's urban development plan (10-15 years) with areas designated for the low-cost housing for the Roma (referred to in the conversation as "socially inadaptable") apparently did not take into account the Committee's Opinion. This plan was to be put to referendum after December 2005, which would thus remove the Council's responsibility for its failure to provide low-cost housing. The Deputy Mayor noted that compliance with the Committee's Opinion required the cancellation of both resolutions under dispute; the Opinion implied no further obligation to adopt a low-cost housing plan. With respect to the prosecution of the "petition committee", counsel argued that the State party has been vague about the kind of legal action taken against members of this committee. On 9 July 2007, the petitioners provided their comments in relation to the State party's submission of 7 May 2007. They state that the plan to build low-cost housing is of a general nature only and no concrete steps have been made to pursue the plan. In fact, having had three meetings with the Council authorities (the last one on 6 July 2007) the petitioners are of the view that the Municipality of Dobšiná believes to have fulfilled the requirements of the Committee by cancelling both resolutions and that there is no obligation on its part to approve or design a plan for low-cost housing. During their third meeting with the Mayor of Dobšiná they were told that there was no time frame for the construction, that the Municipality's immediate plans involved the building of a cultural centre and improvements to the town infrastructure, and that in his view the situation of the Roma was not that "dramatic" compared to other inhabitants of Dobšiná. The petitioners went on to describe the current living conditions of the Roma: there is only one source of water for approximately 150 families and it is secured by a stream, which the Sanitation Department tested and found to be not drinkable; there are apparently cases of hepatitis and dysentery among the children; they are forced to get the water with buckets and bottles from the stream; and the area near their settlement is used as a dumping place for the town's garbage, including chemical waste. The petitioners also informed the Committee that they requested an expert legal opinion on the observance of the Equal Treatment Act with respect to the Roma from the Slovak Human Rights Centre, which concluded that housing issues do not fall within the scope of the Act. Thus, the action of the Municipality of Dobšiná would not be considered a violation of equal treatment as defined by the Anti-Discrimination Act. Despite this response a complaint was brought before the Roznava Regional Court on 5 December 2006, and a hearing is expected to take place in the autumn.

Annex VII

DOCUMENTS RECEIVED BY THE COMMITTEE AT ITS SEVENTIETH AND SEVENTY-FIRST SESSIONS IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION

The following is a list of the working papers referred to in chapter VIII submitted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

A/AC.109/2006/2	Western Sahara
A/AC.109/2006/3	St. Helena
A/AC.109/2006/4	Anguilla
A/AC.109/2006/5	Pitcairn
A/AC.109/2006/6	Bermuda
A/AC.109/2006/7	American Samoa
A/AC.109/2006/8	Guam
A/AC.109/2006/9	Gibraltar
A/AC.109/2006/10	Tokelau
A/AC.109/2006/11	United States Virgin Islands
A/AC.109/2006/12	British Virgin Islands
A/AC.109/2006/13	Montserrat
A/AC.109/2006/14	New Caledonia
A/AC.109/2006/15	Turks and Caicos Islands
A/AC.109/2006/16	Cayman Islands
A/AC.109/2006/17	Falkland Islands (Malvinas)

Annex VIII

COUNTRY RAPPORTEURS FOR REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AND FOR STATES PARTIES CONSIDERED UNDER THE REVIEW PROCEDURE AT THE SEVENTIETH AND SEVENTY-FIRST SESSIONS

Initial and periodic reports considered by the Committee and countries considered under the review procedure	Country rapporteur
Antigua and Barbuda Initial to ninth periodic reports (CERD/C/ATG/9)	Mr. Valencia Rodríguez
Canada Seventeenth and eighteenth periodic reports (CERD/C/CAN/18)	Mr. Thornberry
Costa Rica Seventeenth to eighteenth periodic reports (CERD/C/CRI/18)	Mr. Avtonomov
Czech Republic Sixth and seventh periodic reports (CERD/C/CZE/7)	Mr. Yutzis
Democratic Republic of the Congo Eleventh to fifteenth periodic reports (CERD/C/COD/15)	Ms. Dah
Ethiopia (review procedure) Overdue reports: seventh to fifteenth periodic reports	Mr. Thornberry
The former Yugoslav Republic of Macedonia Fourth to seventh periodic reports (CERD/C/MKD/7)	Mr. Lindgren Alves
India Fifteenth to nineteenth periodic reports (CERD/C/IND/19)	Mr. Sicilianos
Indonesia Initial to third periodic reports (CERD/C/IDN/3)	Mr. Pillai

Initial and periodic reports considered by the Committee and countries considered under the review procedure	Country rapporteur
Israel Tenth to thirteenth periodic reports (CERD/C/471/Add.2)	Mr. Kjaerum
Kyrgyzstan Second to fourth periodic reports (CERD/C/KGZ/4)	Mr. Valencia Rodríguez
Liechtenstein Second and third periodic reports (CERD/C/LIE/3)	Mr. Avtonomov
Mozambique Second to twelfth periodic reports (CERD/C/MOZ/12)	Mr. Ewomsan
New Zealand Fifteenth to seventeenth periodic reports (CERD/C/NZL/17)	Mr. Sicilianos
Republic of Korea Thirteenth and fourteenth periodic reports (CERD/C/KOR/14)	Mr. Kemal

Annex IX

OVERVIEW OF THE METHODS OF WORK OF THE COMMITTEE

Rules of procedure

List of speakers

Rule 40

1. During the course of a debate, the Chairman may announce the list of speakers and, with the consent of the Committee, declare the list closed. The Chairman may, however, accord the right of reply to any member or representative if a speech delivered after he has declared the list closed makes this desirable. When the debate on an item is concluded because there are no other speakers, the Chairman shall declare the debate closed. Such closure shall have the same effect as closure by the consent of the Committee.

2. National Human Rights Institutions accredited to take part in the deliberations of the Human Rights Council may, with the consent of the concerned State party, address the Committee in official meetings, in an independent capacity and from a separate seating, on issues related to the dialogue between the Committee and a State party, the report of which is being considered by the Committee.

Note: This document complements and amends the rules of procedure of the Committee on the Elimination of Racial Discrimination (CERD/C/35/Rev.3).

Annex X

COMMENTS OF STATES PARTIES ON THE CONCLUDING OBSERVATIONS ADOPTED BY THE COMMITTEE

Fifteenth to nineteenth periodic reports of India

The following comments were sent on 30 July 2007 by the Permanent Representative of India to the United Nations concerning the concluding observations adopted by the Committee following the consideration of the fifteenth to nineteenth periodic reports submitted by the State party:[a]

"The Government of India thanks the Committee for the opportunity for a free and frank exchange of views during the consideration of India's fifteenth to nineteenth periodic reports at its Seventieth Session held on 23 and 26 February 2007. The points made in the Concluding Observations had been raised earlier by the Country Rapporteur and were fully responded to by the Government of India, during the presentation of its report. We would, therefore, request that copies of the responses of the Government of India be made part of the official records of the proceedings of the Seventieth Session of the Committee and be posted on the website as well. These include:

(i) Statement made by Solicitor General of India - 23 February, 2007

(ii) Statement made by Permanent Representative of India - 23 February, 2007

(iii) Statement made by Permanent Representative of India - 26 February, 2007

(iv) Statement made by Solicitor General of India - 26 February, 2007

(v) Points made by Professor Dipankar Gupta - 23 and 26 February, 2007

(vi) Replies by the Indian delegation on various specific issues raised by the Committee and the Country Rapporteur - 26 February, 2007

(vii) Concluding Remarks by Permanent Representative of India - 26 February, 2007

"India has been deeply conscious of and is concerned about her Scheduled Castes and is fully committed to tackle any discrimination against them at every level and discuss the same at appropriate multilateral fora.

"The Constitution of India abolished 'untouchability' and forbids its practice in any form. There is a National Commission for Scheduled Castes, established in accordance with relevant provision of the Constitution of India, with functions that include enquiring into specific complaints with respect to deprivation of rights and safeguards of scheduled castes. In addition, there are explicit and elaborate legal and administrative provisions to address caste-based discrimination in the country and the Government has been taking a number of measures for the effective implementation of these provisions.

"Caste-based discrimination is, however, not a form of racial discrimination and hence not covered by the International Convention on Elimination of All Forms of Racial Discrimination. This has been the position of the Government of India and we would like to reiterate this so that it is clearly noted in the official records of the Committee.

"The Government of India's position has been substantiated on several grounds including the detailed references made in response to the Committee's request (paragraph 2 of document CERD/C/IND/19 - list of issues) and to the 1965 *travaux preparatoire* of the Convention. These have not been refuted by the Committee in its Concluding Observations. In addition, detailed expositions based on sociology as to why caste could not be covered under race were also brought to bear in support of the Indian position.

"Firstly, in terms of the ordinary meaning of the expression 'racial discrimination' it is well accepted that the Indian caste system cannot be said to be racial in origin.

"Secondly, the reference to Scheduled Castes by the Indian Delegation during the *Travaux Preparatoire* of 1965 was for the limited purpose of protecting the special measures constitutionally sanctioned in the Indian Constitution for the historically disadvantaged Scheduled Castes. It had no relation to the definition of racial discrimination nor did it have anything to do with the word 'descent'. In view of the above, the use of the expression 'descent' cannot be used to assert that the term 'descent' as used in Article 1 (1) has a special meaning and that it must be taken as including caste-based discrimination.

"Thirdly, CERD is a specific Convention on elimination of racial discrimination. One of the main reasons for the context for adoption of the Convention was the practice of apartheid. This is clear from the various recitals of the Convention, which include references to (i) the United Nations condemnation of colonialism and the practices of segregation and discrimination associated therewith, (ii) the rejection of any doctrine of superiority based on racial differentiation as scientifically false, morally condemnable, socially unjust and dangerous, and (iii) the manifestation of racial discrimination then in evidence in some parts of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation. Caste was not even in the contemplation of the participants to the deliberations on the Convention.

"The Committee has also made observations regarding Scheduled Tribes in India as part of its concern for indigenous people. However, we regard the entire population of India at independence, with the departure of the colonizers, and their successors to be indigenous, consistent with the definitions in the ILO Conventions.

"Thus, in the context of India, the situation of her Scheduled Tribes is not covered under the mandate of CERD. This is being reiterated to make clear the position of the Government of India in the records of the CERD Committee. Nonetheless, we need to clarify that the Government of India is deeply conscious of and fully committed to the empowerment of her Scheduled Tribes and we would be willing to discuss these issues and offer information at appropriate multilateral fora. There are also special provisions in the Constitution in this regard along with specific legal and administrative mechanisms including a National Commission on Scheduled Tribes."

Note

[*] For the text of the concluding observations, see paragraphs 159 to 193 above. The comments refer to the unedited version of the concluding observations.

Annex XI

LIST OF DOCUMENTS ISSUED FOR THE SEVENTIETH AND SEVENTY-FIRST SESSIONS OF THE COMMITTEE[a]

CERD/C/70/1	Provisional agenda and annotations of the seventieth session of the Committee
CERD/C/70/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventieth session of the Committee
CERD/C/71/1	Provisional agenda and annotations of the seventy-first session of the Committee
CERD/C/71/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventy-first session of the Committee
CERD/C/71/3	Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/SR.1787-1817	Summary records of the seventieth session of the Committee
CERD/C/SR.1818-1845	Summary records of the seventy-first session of the Committee
CERD/C/ATG/CO/9	Concluding observations of the Committee on the Elimination of Racial Discrimination - Antigua and Barbuda
CERD/C/CAN/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Canada
CERD/C/CZE/CO/7	Concluding observations of the Committee on the Elimination of Racial Discrimination - Czech Republic
CERD/C/MKD/CO/7	Concluding observations of the Committee on the Elimination of Racial Discrimination - The former Yugoslav Republic of Macedonia
CERD/C/IND/CO/19	Concluding observations of the Committee on the Elimination of Racial Discrimination - India
CERD/C/ISR/CO/13	Concluding observations of the Committee on the Elimination of Racial Discrimination - Israel

CERD/C/LIE/CO/4	Concluding observations of the Committee on the Elimination of Racial Discrimination - Liechtenstein
CERD/C/ETH/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination - Ethiopia
CERD/C/CRI/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Costa Rica
CERD/C/COD/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination - Democratic Republic of the Congo
CERD/C/IDN/CO/3	Concluding observations of the Committee on the Elimination of Racial Discrimination - Indonesia
CERD/C/KGZ/CO/4	Concluding observations of the Committee on the Elimination of Racial Discrimination - Kyrgyzstan
CERD/C/MOZ/CO/12	Concluding observations of the Committee on the Elimination of Racial Discrimination - Mozambique
CERD/C/NZL/CO/17	Concluding observations of the Committee on the Elimination of Racial Discrimination - New Zealand
CERD/C/KOR/CO/14	Concluding observations of the Committee on the Elimination of Racial Discrimination - Republic of Korea
CERD/C/ATG/9	Initial to ninth periodic reports of Antigua and Barbuda
CERD/C/CAN/18	Seventeenth and eighteenth periodic reports of Canada
CERD/C/CZE/7	Sixth and seventh periodic reports of Czech Republic
CERD/C/MKD/7	Fourth to seventh periodic reports of The former Yugoslav Republic of Macedonia
CERD/C/IND/19	Fifteenth to nineteenth periodic reports of India
CERD/C/471/Add.2	Tenth to thirteenth periodic reports of Israel
CERD/C/LIE/4	Second and third periodic reports of Liechtenstein
CERD/C/CRI/18	Eleventh to fifteenth periodic reports of Costa Rica
CERD/C/COD/15	Eleventh to fifteenth periodic reports of the Democratic Republic of the Congo
CERD/C/IDN/3	Initial to third periodic reports of Indonesia

CERD/C/KGZ/4	Second to fourth periodic reports of Kyrgyzstan
CERD/C/MOZ/12	Second to twelfth periodic reports of Mozambique
CERD/C/NZL/17	Fifteenth to seventeenth periodic reports of New Zealand
CERD/C/KOR/14	Thirteenth and fourteenth periodic reports of the Republic of Korea
CERD/C/BHR/CO/7/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Bahrain
CERD/C/COD/Q/15/Add.1	Written replies by the Government concerning the list of issues formulated by the Committee on the Elimination of Racial Discrimination - Democratic Republic of the Congo
CERD/C/AZE/CO/4/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial - Azerbaijan
CERD/C/FRA/CO/16/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial - France
CERD/C/GEO/CO/3/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Georgia
CERD/C/LTU/CO/3/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Lithuania

Note

[a] This list only concerns documents issued for general distribution.

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